Post Dec. Vol 5

Filed

Mr Bradley Jan. 12 1880

12-79 Submitted.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1025.

EDWARD J. GAY, APPELLANT,

vs.

CHARLES E. ALTER, MRS. FERGUS PENISTON, MRS. EMMA FELICIE ALLAIN; CHARLES WHITING AND ANDREW K. BROWN, EXECUTORS OF GEORGE F. MILLER, DECEASED; AND THE GRAND LAKE COAL COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 25, 1879.

SUPREME COURT OF THE UNITED STATES

No. 1025.

EDWARD J. GAY, APPELLANT,

vs.

CHARLES E. ALTER, MRS. FERGUS PENISTON, MRS. EMMA FELICIE ALLAIN; CHARLES WHITING AND ANDREW K. BROWN, EXECUTORS OF GEORGE F. MILLER, DECEASED; AND THE GRAND LAKE COAL COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Exhibit A	9	3
B	18	6
C	26	8
D	36	11
E	37	12
Subpœna in chancery to Mrs. M. D. Allain	39	13
Marshal's return	41	13
Subpœna in chancery to Sosthene Allain	41	14
Marshal's return	43	14
Subpœna in chancery to William H. Aymar	43	14
Marshal's return	45	15
Entry at rules	45	15
Answer	45	15
Entry at rules	48	16
Do	49	16
Decree	49	16
Order to issue writ	53	17
Writ of seizure and sale	53	18
Marshal's return	56	19
Charles E. Alter's bill in the nature of a bill of intervention	63	21
Affidavit	79	26
Notice	80	26
Order	81	27
Exhibit A, filed with Alter's bill	82	27
B, filed with Alter's bill	84	28
C, filed with Alter's bill	94	31
D, filed with Alter's bill	102	33
Subpœna in chancery to E. J. Gay	112	36

	Original.	Print.
Marshal's return	114	37
Subpœna in chancery to Mrs. E. F. A. Peniston	114	37
Marshal's return	116	37
Subpœna in chancery to Miss V. E. Allain	116	38
Marshal's return	118	38
Subpœna in chancery to William H. Aymar	119	38
Marshal's return	120	39
Subpœna in chancery to Andrew K. Brown and Charles Whiting	121	39
Marshal's return	122	40
Appearance of E. J. Gay	123	40
Subpœna in chancery to Andrew K. Brown and Charles Whiting	123	40
Marshal's return	125	40
Appearance of William H. Aymar	125	41
Appearance of testamentary executors of George F. Miller to intervention of Charles E. Alter	126	41
Answer of Miller's executors and Grand Lake Coal Company to intervention of Charles E. Alter	126	41
Extract from chancery order-book	133	43
Subpœna in chancery to H. P. Redmond	134	43
Marshal's return	135	44
Answer of William H. Aymar to bill of Charles E. Alter	135	44
Extract from chancery order-book	140	45
Demurrer of Charles E. Alter to part of answer of William H. Aymar	140	46
Extract from chancery order-book	142	46
Replication of Charles E. Alter to answer of Charles Whiting and A. K. Brown, executors	142	46
Replication of Alter to part of Aymar's answer	144	47
Replication of Charles E. Alter to answer of E. J. Gay	146	47
Extract from chancery order-book	147	48
Answer of E. J. Gay to bill of Charles E. Alter	148	48
Affidavit	156	50
Extract from chancery order-book	157	50
Answer of Mrs. Peniston and Miss Allain	157	51
Copy of act of sale therein referred to	161	52
Extract from chancery order-book	172	55
Motion for rule to pay funds to E. J. Gay	173	55
Extract from minutes, June 12, 1877	175	56
Extract from minutes, June 13, 1877	175	56
Extract from minutes, June 15, 1877	176	56
Interrogations by Grand Lake Coal Company et als	177	57
Cross-interrogations to H. P. Redmond	180	58
Notice to cross-interrogatories	185	59
Intervenor's commission	186	60
Interrogatories to Frank M. Ames	189	61
Objections of E. J. Gay to interrogatories of Charles E. Alter to Frank M. Ames	195	63
Deposition of F. M. Ames	199	64
Exhibit A, annexed to deposition of F. M. Ames	208	67
B, annexed to deposition of F. M. Ames	209	67
C, annexed to deposition of F. M. Ames	210	67
D, annexed to deposition of F. M. Ames	211	67
E, annexed to deposition of F. M. Ames	212	68
F, annexed to deposition of F. M. Ames	212	68
G, annexed to deposition of F. M. Ames	313	68
H, annexed to deposition of F. M. Ames	214	69

	Original.	Print.
Exhibit I, annexed to deposition of F. M. Ames	215	69
J, annexed to deposition of F. M. Ames	215	69
K, annexed to deposition of F. M. Ames	216	70
L, annexed to deposition of F. M. Ames	217	70
M, annexed to deposition of F. M. Ames	217	70
N, annexed to deposition of F. M. Ames	218	70
O, annexed to deposition of F. M. Ames	219	71
P, annexed to deposition of F. M. Ames	219	71
Q, annexed to deposition of F. M. Ames	220	71
R, annexed to deposition of F. M. Ames	220	71
S, annexed to deposition of F. M. Ames	221	71
T, annexed to deposition of F. M. Ames	222	72
U, annexed to deposition of F. M. Ames	223	72
V, annexed to deposition of F. M. Ames	223	72
W, annexed to deposition of F. M. Ames	223	72
X, annexed to deposition of F. M. Ames	224	73
Y, annexed to deposition of F. M. Ames	225	73
Z, annexed to deposition of F. M. Ames	226	73
A A, annexed to deposition of F. M. Ames	227	74
Commission on behalf of Grand Lake Coal Company	230	74
Answers of H. P. Redmond to interrogatories and cross-interrogatories	233	75
Intervention of R. M. Walsh	242	78
Affidavit	256	82
Order	257	82
Subpœna in chancery to Frank M. Ames	257	83
Marshal's return	259	83
Subpœna in chancery to Edward J. Gay	259	83
Marshal's return	261	84
Subpœna in chancery to Mrs. E. F. A. Peniston	261	84
Marshal's return	263	84
Subpœna in chancery to Miss V. E. Allain	263	85
Marshal's return	265	85
Subpœna in chancery to William H. Aymar	265	85
Marshal's return	267	86
Subpœna in chancery to Andrew K. Brown	267	86
Marshal's return	268	87
Subpœna in chancery to Charles Whiting	269	87
Marshal's return	270	87
Subpœna in chancery to Jack Wharton	271	87
Marshal's return	272	88
Interrogatories to H. P. Redmond on behalf of intervenor, R. M. Walsh	272	88
Affidavit	274	89
Notice to cross-interrogatories	275	89
Marshal's return	276	89
Cross-interrogatories to H. P. Redmond	277	90
Answer of Mrs. E. F. A. Peniston, Miss V. E. Allain, and C. E. Alter to intervention of R. M. Walsh	281	91
Affidavit	287	93
Extract from chancery order-book	287	93
Notice to cross-interrogatories	288	93
Marshal's return	289	94
Extract from minutes, January 4, 1878	289	94
Extract from chancery order-book	290	94
Rule to read testimony	292	94

	Original.	Print.
Extract from minutes, February 4, 1878	293	95
February 11, 1878	294	95
February 21, 1878	294	95
February 23, 1878	295	96
February 28, 1878	295	96
April 22, 1878	296	96
May 23, 1878	296	96
May 31, 1878	296	96
June 6, 1878	296	97
Note of evidence	297	97
Testimony of R. M. Walsh	299	98
Transcript No. 4383, sixth district court	311	102
Exhibit B, sale to Allain by Merrill	18	6
Certificate recorder parish West Baton Rouge	528	180
Iberville	521	178
Record Alter vs. Allain, No. 7415	369	124
Testimony of E. T. Merrick	382	129
E. J. Gay	416	140
F. N. Butler	417, 444	140, 148
T. H. Kennedy	437	146
Thomas S. Elder	441	148
F. M. Ames	199	64
Frederick Eastman	469	159
Charles E. Alter recalled	491, 502	167, 17
Sale of Mrs. Allain to W. H. Aymar	506	172
Fourteen notes	517	175
Documents E and F	533, 535	182
G, H, I	541, 550, 558	184, 187, 189
Note K	568	192
Statement of H. D. Ogden	569	193
Suit, parish St. James	572	194
Testimony of Aymar and pledge M	587, 589	200
Redmond, taken under commission	588	200
A. Hero, jr.	597	202
Dufour	603	204
Decree	608	205
Master's report	609	206
Motion and order, report approved	616	208
Petition for appeal and order	617	209
Bond for appeal	619	210
Clerk's certificate	622	211
Citation	623	212

1 *Bill of complaint.—Filed January 21st, 1873.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

FRANK M. AMES
vs.
MARGARET D. ALLAIN AND OTHERS. } No. 6894.

To the judges of the circuit court of the United States for the district of Louisiana.

Frank M. Ames, of the city of Boston, Massachusetts, and a citizen of Massachusetts, brings this his bill against Mrs. Margaret D. Allain, wife of Sosthene Allain, of the vicinity of Baton Rouge, Louisiana, and William H. Aymar, of the city of New Orleans, Louisiana, and all citizens of the State of Louisiana; and thereupon your orator complains and says that on the third day of July, A. D. 1869, Amos B. Merrill, a citizen of the State of Massachusetts, in whom the legal title to
2 the land and plantation hereinafter described was vested by an authentic act importing a confession of judgment to secure the vendor's privilege and mortgage for the unpaid portions of the price, sold and conveyed to said Margaret D. Allain, wife of said Sosthene Allain, she being separate in property from her said husband, to her, her heirs and assigns, with the pact de non alienando, that certain tract of land or plantation situate, lying, and being partly in the parish of West Baton Rouge, and partly in the parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon, and forming the point known as Point Manchac; said tract of land being cultivated as a sugar plantation, known as the Australia plantation, bounded on the upper line by the land of Valsin Tullier (exclusive of the Brackin tract, containing about ninety acres), containing in all about fifteen hun-
3 dred and one $\frac{34}{100}$ acres, or seventeen hundred and seventy-four superficial arpents and fifty-three hundredths of an arpent, and being composed of different tracts of land acquired by said Sosthene Allain, as per plan of said plantation surveyed by Auguste Wrotnowski, in March, A. D. 1860, said plan being, or having been, in the hands of Felix Grima, a notary public in the parish of Orleans, together with all and singular the buildings and improvements thereon, consisting of a brick sugar-house and mill with slated roof, machinery, dwelling-house and outhouses, negro quarters, stables, and the improvements and appurtenances thereunto belonging or in anywise appertaining, and also all rights, ways, and immunities thereto belonging, and all the personal property and effects on said plantation, and all the cattle, mules, horses, stock, wagons, tools, harness, and agricultural implements, &c., of whatever nature or kind now on said plantation.

Your orator further shows that thirty three thousand dollars of
4 the price of said plantation and property attached thereto were to be paid at a future day, and for which said defendant, Mrs. M. D. Allain, subscribed under the same date, viz, July 3d, 1869, three several promissory notes, each for eleven thousand dollars, payable to her own order, respectively, at one, two, and three years, at the Citizens' Bank of Louisiana, in this city, with interest thereon at the rate of six per cent. per annum from date until maturity, and thereafter, if not then paid, until final liquidation, at the rate of eight per cent. per annum; said interest at six per cent. per annum being payable annually;

and that said three promissory notes were the same day paraphed "Ne Varietur" by the said notary for identification with said act of sale, mortgage, and privilege.

Your orator further shows that it was further agreed in case of suit for the recovery of the amount of said promissory notes, or any
5 part thereof, that said purchaser, M. D. Allain, should be bound herself to pay the fees of the attorney who might be employed to prosecute such suit, at five per cent. on the amount sued for.

Your orator further shows that in order the full and punctual payment of said notes, and all attorney's fees, &c., vendor's lien and privilege and special mortgage in favor of said present vendor and in that of the future holder or holders were retained on the said property, said purchaser binding herself and her heirs not to sell, alien, or encumber the same to the prejudice of the said act of sale and mortgage, which was done with her said husband's consent. All of which will the more fully appear by reference to a certified copy of said act, annexed as Exhibit A.

Your orator further shows that said act of sale, privilege, and mortgage was duly recorded in the record of mortgages in the parish of West Baton Rouge on the 20th day of July, A. D. 1869, and in the parish of Iberville, on the 26th day of July, 1869.

6 Your orator further shows that on the seventh day of July, A. D. 1869, by a notarial act passed before Selim Magner, a notary public for the parish of Orleans, for the one half, and by another act passed on the ninth day of May, 1871, before Joseph Cuvillier, a notary public of the parish of Orleans, for the other half, said Margaret, by the name of Marguerite D. Allain, sold and conveyed said Australia plantation to said William H. Aymer, who, in the first of said acts, assumed to pay said promissory notes and interest, and engaged to and with said Mrs. M. D. Allain to place himself in her place and stead as to said mortgage notes. All of which will the more fully appear by reference to copies of said last mentioned acts, annexed as Exhibits B & C.

Your orator further represents that the said promissory note falling due three years after date, having a special endorsement to said
7 Amos B. Merrill written over the signature of said M. D. Allian, and a special endorsement to Oakes Ames, and a blank endorsement, without recourse, of the said Oakes Ames, for value before maturity, came into the hands of your orator, who is the legal holder thereof and of the accessory rights of privilege and mortgage upon said plantation and personal property attached thereto. A copy of said promissory note is hereunto annexed for greater certainty and marked Exhibit D.

Your orator further shows that said note, having been placed in the State National Bank for collection, was at maturity protested, by Exhibit E, and that he has at various times applied to the said Mrs. M. D. Allain and the said William Henry Aymer for the payment of said promissory note, the last of said series, and they have, with the exception of the first and second years' interest, notwithstanding their manifold promises, hitherto neglected and refused to comply with your orator's said reasonable request.

8 All which actings and doings and refusals are contrary to equity and good conscience, and tend to the manifest injury of your orator.

In consideration whereof, and forasmuch as your orator is without remedy at common law, and cannot have adequate relief except in a court of equity, where matters of this sort are properly cognizable and relievable, to the end that said Mrs. M. D. Allain and her husband,

Sosthene Allain, and William Henry Aymer, may (without oath) answer the premises; that an account be taken showing the amount due to your orator; that the vendor's privilege and special mortgage be decreed to exist upon said land and personal effects in favor of your orator, and that the same be ordered to be sold according to law to pay said promissory note, attorney's fees, cost of copies and stamps, and paid to you. And that, if the same be insufficient to pay the
9 amount found to be due your orator, he have a decree for the balance under the 92d rule in equity against said Mrs. Marguerite D. Allain and the said William H. Aymer under his stipulation, and for such other and further relief as the nature of the case may require.

May it please your honors to grant unto your orator the writ of subpœna of the United States, directed to the said Margaret or Marguerite D. Allain and Sosthéne Allain, her husband, and William H. Aymer, commanding them and every of them, at a day and under a certain pain therein to be specified, personally to appear before your honors in this hon. court, and then and there to answer all and singular the premises, and to stand to and perform and abide such order and decree therein as to your honors may seem meet, and your orator shall ever pray.

(Signed) By RACE, FOSTER & E. T. MERRICK.
Solicitors for Complainant.

Exhibit A.—Filed January 21st, 1873.

10 UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known, that on this third day of July, eighteen hundred and sixty-nine, before me, Edward G. Gottschalk, a notary public in and for this city and the parish of Orleans, duly commissioned and sworn, in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Amos B. Merrill, esquire, of Boston, Massachusetts, who declared that for the consideration hereinafter set forth, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with no personal warranty on his part, unto Mistress Margaret D. Allain, wife of Sosthéne Allain, residing in the parish of West Baton Rouge, in this State, here present, acknowledging possession and accepting for herself, her heirs and assigns, under the authorization of Sosthéne Allain, jr., the attorney in fact of said
11 Sosthéne Allain, duly appointed per act of procuration executed in his favor by act before Henry Desobry, a notary in the parish of Iberville, on the 23d June, 1869, a certain tract of land or plantation situate and being partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon and forming the point known as "Point Manchac," opposite Bayou Manchac, said tract of land being cultivated as a sugar plantation known as the "Australia Plantation," bounded on the upper line by lands of Valsin Tullier (exclusive of the Brackin tract, containing about ninety acres), containing in all an area of fifteen hundred and one $\frac{34}{100}$ acres (1,501 $\frac{34}{100}$), or seventeen hundred and seventy-four superficial arpents and $\frac{53}{100}$ of an arpent, and being composed of different tracts of land acquired by said Sosthéne Allain, as per plan of said plantation as surveyed by Auguste Wrotnowski in March, 1860, said plan being now in the hands of Felix Grima, a notary,
12 in this city:

Together with all and singular the buildings and improvements thereon, consisting of a brick sugar-house and mill with slated roof,

machinery, dwelling-house, and out-houses, negro quarters, stables, and other improvements and appurtenances thereto belonging or in any wise appertaining; and also all rights, ways, and immunities thereto belonging; all the personal property and effects on said plantation, and all the cattle, mules, horses, stock, wagons, tools, harness, and agricultural implements, &c., of whatever nature or kind, now on said plantation, which plantation and appurtenances were acquired by said Merrill by purchase from Sosthéne Allain and wife per act passed before me, notary, on the third day of July, 1869, the titles to which plantation are detailed and described in the said act of purchase of said Merrill, with the nature of which titles Mrs. Allain is satisfied and declares
13 herself familiar, and does hereby accept the same without any warranty on the part of said Merrill as above set forth, and renounces to any right of recourse against him in case of eviction of the real estate herein transferred to her, and binding herself to hold him, said Merrill, harmless on account of any claims which might be brought forward in regard to the other matters and things hereby transferred to her:

To have and to hold the said plantation and appurtenances unto the said purchaser, her heirs and assigns forever.

And the said Merrill declared that he hereby sells and conveys the said plantation and appurtenances unto said Mrs. Margaret D. Allain in accordance with a decree of the district court of the United States for the district of Louisiana, at the May term of 1869, in a suit wherein he, said Merrill, is the plaintiff and subrogee of the assignee in bankruptcy of A. S. Mansfield and said Allain and wife are parties; and that the consideration of sale remaining unpaid is thirty-three thousand dollars, the remainder being satisfied.

14 Now, therefore, in payment of said sum of thirty-three thousand dollars, she, said Mrs. Allain, has subscribed under date hereof three several promissory notes to her own order, and by her endorsed, each for eleven thousand dollars, payable respectively at one, two and three years, at the Citizens' Bank of Louisiana in this city, with interest thereon at the rate of six per cent. per annum from date until maturity, and thereafter if not then paid, until final liquidation, at the rate of eight per cent. per annum; the current interest at six per cent. per annum being payable annually. Which notes have been paraphed ne varietur by me, notary, for identification herewith, and have been delivered to said Merrill, who acknowledges the receipt thereof.

In case of suit for the recovery of the amount of said notes, or of any part thereof, the said purchaser binds herself to pay the fees of the attorney who may be employed to prosecute such suit, which fees are hereby fixed at five per cent. on the amount sued for.

15 Now, in order to secure the full and punctual payment of said notes, and all attorneys' fees, &c., vendor's lien and privilege, and special mortgage in favor of the said present vendor and in that of the future holder or holders of said notes, are hereby retained on the said property, the said purchaser binding herself and her heirs not to sell, alienate, or encumber the same to the prejudice of this act.

The said Mrs. Allain furthermore binds herself to keep the buildings and improvements on said plantation constantly insured against loss by fire up to an amount not less than fifteen thousand dollars, and to transfer the policy or policies of insurance to said vendor, who shall have the right of transferring the same in turn to any future holder or holders of said notes. And in case of failure or neglect on the part of said Mrs. Allain to have such insurance effected or renewed the holder

or holders of said notes shall be authorized to do so, and the reimbursement of all premiums paid for that purpose shall be secured by the mortgage herein retained.

16 Said Mrs. Allain does hereby dispense with the production of the certificates of the recorder of the parishes of West Baton Rouge and Iberville, showing what mortgages or encumbrances, if any, are recorded against said property, and exonerates me, notary, from all liability in the premises. She, moreover, assumes the payment of all taxes in arrears, or now due and coming due on said plantation as an additional consideration of this sale.

Said Merrill declared that he is married, but that his wife is a resident of Boston, in the State of Massachusetts, and has never acquired any domicile here, and that she has no rights of any nature on his property.

Thus done and passed in my office, at New Orleans aforesaid, on the day, month, and year hereinbefore written in the presence of James Fahey and Martin L. Ainsworth, competent witnesses, who sign these presents with said appearers and me, notary, after reading thereof.

(Orig'l signed) M. D. ALLAIN.
" " AMOS B. MERRILL.
" " S. ALLAIN, JR.
Per Power of Attorney.
" " M. L. AINSWORTH.
" " JAS. FAHEY.
" " E. G. GOTTSCHALK,
N. P.

17 This deed being made to carry into effect a decree of court, and without new valuable consideration, need not be stamped as a conveyance, but should be stamped as an agreement or contract.

(Signed) S. A. STOCKDALE,
Coll. Int. Rev. 1st Dist. La.

JULY 6, '69.

Parish of West Baton Rouge. Registered in Cash Sale Book No. 3, pages 167 to 170, No. 78. Recorded in Record of Mortgages, No. 1; folios 79, 80, and 81; entry No. 43, on the 20th July, 1869.

Parish of Iberville. Registered in Conveyance Book No. 9. Entry No. 352. Recorded in Mortgage Book No. 9. Entry No. 310, on the 26th July, 1869.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

I, Andrew Hero, jr., a notary public and custodian of notarial records in and for this city and parish of Orleans, duly commissioned and qualified, do certify the above and foregoing to be a true and
18 correct copy of the original act extant amongst the notarial records of Edward G. Gottschalk, late a notary in this city, and whose notarial records I hold as custodian thereof.

Attest my hand and seal of custodian aforesaid at New Orleans, this 26th November, A. D. 1872.

[SEAL.] (Signed) ANDREW HERO, JR.,
Custodian of Notarial Records.

STATE OF LOUISIANA,
Parish of West Baton Rouge:

I hereby certify that the within and foregoing act has been duly re-

corded in my office July the 20th, 1869, in Record of Mortgages, No. 1; folios No. 79, 80, and 81; entry No. 43.

As witness my hand and seal of office this 30th Dec., A. D. 1872.

[SEAL] (Signed) O. BERNAU,
Recorder.

Exhibit B.—Filed January 21, 1873.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this day, before me, Selim Magner,
19 a notary public in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, personally came and appeared Mrs. Marguerite D. Allain, wife of Sosthene Allain, of the parish of West Baton Rouge, in this State, herein acting, in the absence of her said husband, under the assistance and authorization of Sosthene Allain, jr., the attorney in fact of said Sosthene Allain, duly appointed by act of procuration executed before Henry Desobry, a notary public in the parish of Iberville, on the twenty-third day of June, 1869, and moreover, by a supplemental power attached thereto, dated the fifth of July, 1869, who declared that, for the consideration and on the terms and conditions hereinafter set forth, she does by these presents grant, bargain, and sell, with all legal warranties and with subrogation to all her rights and actions, in warranty against all preceding vendors or possessors, unto William Henry Aymar, of this city, here present, acknowledging possession, and accepting for himself, his heirs and assigns, the undivided half of the hereinafter-described
20 tract of land, together with the one undivided half of the buildings and improvements thereon and appurtenances thereof, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging, to wit: A certain tract of land or plantation, situate, lying, and being partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, on the right bank of the river Mississippi, fronting thereon, and forming the point known as Point Manchac, opposite Bayou Manchac, said tract of land being cultivated as a sugar plantation, known as the "Australia Plantation," bounded on the upper line by lands of Valsin Tullier (exclusive of the Brackin tract, containing about ninety acres), containing in all an area of fifteen hundred and one $\frac{34}{100}$ acres (1,501$\frac{34}{100}$), or seventeen hundred and seventy-four superficial arpents and $\frac{53}{100}$ of an arpent, and being composed of different tracts of land acquired by Sosthene Allain, as per a plan of said plantation as surveyed by Auguste Wrolnowski, in March, 1860, said plan being now in the hands of Felix Grima, a notary public in this
21 city, together with the undivided half of all and singular the brick sugar mill with slated roof, machinery, dwelling-house, outhouses, negro-quarters, barns, stables, and other improvements thereon, and of all the cattle, mules, horses, stock, wagons, tools, harness, and agricultural implements, &c., of whatsoever nature or kind, now on said plantation; which plantation and appurtenances were acquired by said Mistress Marguerite D. Allain by purchase from Amos B. Merrill, of Boston, Massachusetts, per act before Edward G. Gottschalk, a notary public in this city, on the third day of July, 1869, the titles to which plantation are detailed and described in the act of purchase of him, said Merrill.

To have and to hold the said presently so'd one undivided half of said

plantation and appurtenances unto the said purchaser, his heirs and assigns.

The said purchaser does hereby dispense with the production of the certificate of mortgages from the parishes of West Baton Rouge and Iberville, as required by law, and exonerates the undersigned notary from all responsibility in the premises; but the said Mistress Al-
22 lain nevertheless declared that said property stands incumbered in her name by the mortgage she granted in and by her afore-recited act of purchase, to secure the payment of three several promissory notes, drawn by her to the order of and endorsed by herself, dated the third day of July, 1869, each for eleven thousand dollars, payable respectively at one, two, and three years after date, at the Citizens' Bank of Louisiana, in this city, with interest thereon at six per cent. per annum, from date until maturity, and eight per cent. thereafter until final payment, said six per cent. interest being payable annually.

This sale is made for and in consideration of the price and sum of thirty-six thousand three hundred and twenty dollars, and interest as hereinafter set forth, which has been paid and is payable in manner following, to wit, thirty-three hundred and twenty dollars in ready money paid by said purchaser to the said vendor, the receipt wherof is hereby acknowledged, and acquittance and discharge therefor granted,
23 and the balance of thirty-three thousand dollars and *and* interest in the obligation which the said purchaser takes to put himself in the place and stead of his said vendor, and assumes, as he hereby does assume, as well to pay to her acquittance the above described three several promissory notes in capital and all interest, accrued and to accrue thereon, as to assume the reversion of the mortgage by which the payment of the same stands secured.

The U. S. internal revenue stamps of thirty-six dollars and fifty cents on this act are hereto attached.

And thereupon Mrs. Marguerite D. Allain, authorized as aforesaid, furthermore declared that it was her intention not only to ratify said sale, but to make renunciation of all rights she has, by mortgage or otherwise, on the said property, upon which I, notary, declared to her separately and apart from her husband and out of his presence, as it is my duty, that by the laws of this State she possessed a general mortgage on all the property of her said husband and upon that of the community in case she should renounce thereto—

24 First. For the restitution of her dower and the reinvestment of dotal property brought by her in marriage.

Second. For the restitution of dotal property by her acquired during marriage, by inheritance, donation, or otherwise.

Third. For indemnity against all debts contracted or which she may hereafter contract with her said husband.

Fourth. For such of her paraphernal property and funds as may have been alienated by her said husband, or of which he has had or may have the administration or enjoyment, or of which he may otherwise have benefited.

Fifth. For nuptial presents made to her by her said husband or others.

That in making her intended renunciation, she would deprive herself irrevocably and forever of all rights of reclamation against said property, whether under mortgage, privilege, or otherwise.

Whereupon the said wife declared that she still persisted in the intention she had announced, to ratify said act of sale, and to dispossess herself of all rights and liens which she has upon said property, whether

by mortgage, contract, dower, donation, or otherwise; and the said husband, being now again present before me, and authorizing his
25 said wife, she again declared that she does hereby formally renounce henceforth and forever, all and singular her said rights, and transfer the same to the said purchaser and assigns, to be had and held by him and them, and by them enjoyed, in law and thereout; and she hereby binds herself and her heirs to the said purchaser and his assigns, that he and they shall and will, at all times, acknowledge the validity of the present sale and of the renunciation she now makes of all rights which she has or may have in and to the property herein and hereby sold, and that neither she nor they shall ever seek to oppose or impair the force of this act, hereby renouncing the benefit of all laws, privileges, and customs of which she might avail herself, or which are in her favor in the premises.

Done and passed at New Orleans, the seventh day of July, eighteen hundred and sixty-nine, in the presence of James Fahey and Martin L. Ainsworth, witnesses, residing in this city, who have signed their names, with the said appearers and me, notary, after reading thereof.

(Original signed.)

M. D. ALLAIN,
S. ALLAIN Jr, *p. p. of Atty.*
26 WILLIAM H. AYMAR,
JAS. FAHEY,
M. L. AINSWORTH,

S. MAGNER,
Not. Pub.

STATE OF LOUISIANA,
City of New Orleans.

I, Andrew Hero, jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, and the custodian of notarial records of said parish, duly commissioned and qualified, do certify that the foregoing is a true and correct copy of the original act extant in the records of Selim Magner, late a notary in this city and whose records are in my custody as custodian aforesaid.

As witness my hand and seal, at New Orleans, as custodian aforesaid this twenty-fourth day of December, A. D. 1872.

[SEAL.] (Signed) ANDREW HERO, JR.,
Custodian of Notarial Records.

Exhibit C—Filed January 21, 1873.

STATE OF LOUISIANA.

Before me, Joseph Cuvillier, a notary public for the parish of Orleans and the city of New Orleans, therein residing,
27 personally appeared, Mrs. Marguerite Dilia Kennedy, wife of Mr. Sosthene Allain, with whom she resides in the parish of West Baton Rouge, in this State, the said Mrs. Allain herein acting by virtue of an authorization to her given by her said husband by act passed on the twenty-seventh of April last (1871), before Austin Hunt, a notary public, in and for the parish of Iberville, a duly certified copy of which is hereto annexed. And the said Mrs. Allain authorized as aforesaid, declared that she does by these presents sell with all legal warranty and with subrogation to her rights and actions in warranty against all preceding vendors and other warrantors, unto Mr. William Henry Aymar, of this city, here present and accepting, the undivided half of that cer-

tain tract of land or plantation, situate, lying and being partly in the parish of West Baton Rouge & partly in the parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon, and forming the point known as Point Manchac; said tract of land being
28 The word "said" erased, null & void. (Signed) JOS. C., Not. Pub. cultivated as a sugar plantation, known as the Australia Plantation; bounded on the upper line by lands of Valsin Tullier (exclusive of the Bracken tract, containing about ninety acres) containing in all an area of fifteen hundred and $\frac{34}{100}$ acres or seventeen hundred and seventy-four superficial arpents fifty-three hundredths of an arpent; and being composed of different tract of lands acquired by Sosthene Allain as per plan of said plantation as surveyed by Auguste Wrotnowski, in March, eighteen hundred and sixty; said plan being now in the hands of Felix Grima, a notary public in the parish of Orleans: Together with the undivided half of all and singular the brick sugar-house with slated roof, machinery, dwelling house, out-houses, negro quarters, barns, stables, and other improvements thereon, and all the cattle, mules, horses, stock, wagons, tools, harness, and agricultural implements of whatever nature or kind on said plantation, which is the same acquired by the said Mrs. Allain by purchase from Amos B. Morrell, of Boston, Massachusetts, by act before E. G. Gottschalk, a notary public of this city, on the third of July, eighteen hundred and sixty-nine.

29 This sale is made for and in consideration of the price and sum of forty-two thousand dollars, payable, fifteen thousand dollars, cash, and twenty-seven thousand dollars in thirteen years, with eight per cent. per annum interest from the first of March last (1871), payable annually. In compliance with the above terms and conditions, the said Aymar has paid fifteen thousand dollars, cash, to the said Mrs. Allain, who acknowledges the receipt thereof and grants acquittance therefor.

And for the balance, twenty-seven thousand dollars, with the interest thereon payable annually, the said Aymar has furnished the several promissory notes hereinafter described, subscribed by him to his own order, and by him indorsed, dated March 1st, eighteen hundred and seventy-one; one note for the said sum of twenty-seven thousand dollars, payable thirteen years after date; and thirteen other notes, each for two thousand one hundred and sixty dollars, (being for the yearly interest on said sum of twenty-seven thousand dollars), the said
30 interest notes being made payable respectively at one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, and thirteen years from their date. All of which fourteen notes, bearing eight per cent. interest per annum from maturity until paid, are made payable at the domicil of the Bank of America in this city. And the said notes were handed over to the said Mrs. Allain, who acknowledges the receipt thereof, after being paraphed Ne varietur by the notary undersigned, for identity herewith.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of the said notes, or of any part thereof, the said Aymar binds himself to pay the fees of the attorney-at-law employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for.

Now, therefore, in order to secure the punctual payment of the said notes at maturity, together with interest and attorney's fees, the said Mrs. Allain, authorized as aforesaid, reserves her privilege of vendor, and the said Aymar declared that he does by these presents, mortgage, affect, and specially hypothecate in favor of the

said Mrs. Allain, and to enure to the use and benefit of any
31 and all future holder or holders of the said notes, the said Mrs. Allain here accepting for herself or others, not only the undivided half of the Australia Plantation purchased by these presents, but also the other half of the same plantation which the said Aymar had purchased from the present vendor by act dated July seventh, eighteen hundred and sixty-nine, before Selim Magner, then a notary public of this city. Which entire plantation the said Aymar binds himself not to alienate or encumber to the prejudice of this act.

It is hereby agreed between the parties that Mrs. Allain shall have the right to occupy with her family during the space of three years, to be computed from the first of March last (1871), the main dwelling-house on said plantation and its appurtenances, as well as a sufficient number of negro cabins, as may become necessary, to lodge her servants and those of her family; but in case the said Aymar should hereafter sell the whole of the above described plantation before the expiration
32 of the said three years and after the execution of his purchaser's title deeds, should the latter require from Mrs. Allain the possession of said main dwelling house, its appurtenances and the negro cabins above mentioned, she, the said Mrs. Allain, shall vacate the premises, but only after the expiration of three months, to be computed from the day she shall have been notified in writing of the intention of Mr. Aymar's purchaser to have the possession of the property, the use of which is hereby reserved to Mrs. Allain. During the space of three years above referred to, neither Mrs. Allain nor Mr. Aymar shall be bound to make any repairs to the dwelling-house and negro cabins above referred to, nor shall Mrs. Allain be required to give any security for the use by herself and family of the said dwelling-house and negro cabins.

By the hereunto annexed certificate from the recorder of mortgages for the said parish of Iberville, under date of April eighteenth, eighteen hundred and seventy-one, it appears that there is no other encumbrance standing in the name of the said Mrs. Allain and recorded against
33 the plantation above described than a special mortgage in favor of Mr. Amos B. Merrill, to secure the payment of thirty-three thousand dollars, with interest; which mortgage the said Aymar has assumed by his act of purchase of the other undivided half, passed on the seventh of July, eighteen hundred and sixty-nine, before Selim Magner, then a notary public of this city. Mr. Aymar binds himself to cause to be erased from the books of the recorder of mortgages both for the parish of West Baton Rouge and Iberville, the above mortgage of thirty-three thousand dollars, as follows:

To the extent of eleven thousand dollars by the first day of July, eighteen hundred and seventy-three.

To the extent of eleven thousand dollars more by the first day of July, eighteen hundred and seventy four.

And to free entirely the said plantation from the effects of said mortgage by the first day July, eighteen hundred and seventy-five.

It is agreed by and between the parties hereto, that in case the said Aymar should fail by the first of July, eighteen hundred and
34 seventy-five, to free the said plantation from the effects of the said mortgage of thirty-three thousand dollars, then the said Mrs. Allain shall have the right to enforce not only the payment of such of the interest notes above referred to as may be then due, but also the interest note falling due in the year eighteen hundred and seventy-six, and the note of twenty-seven thousand dollars which shall become due and demandable by the fact of the failure on the part of the said Aymar

to free the above plantation of the mortgage of thirty-three dollars as hereinabove contemplated.

It is also hereby agreed by and between the parties, that Mrs. Allain shall have the right to require and to compel Mr. Aymar to pay by anticipation, and after thirty days' notice, any of the interest coupon notes above referred to, provided the said Aymar be not required to pay by anticipation more than one interest coupon note in the same year.

All the taxes which are or may be now, or may hereafter become due on the said plantation, the said Aymar binds himself to pay. According to the certificate of the recorder of mortgages for the parish
35 of West Baton Rouge, also annexed to these presents, it appears that besides the mortgage for thirty-three thousand dollars above referred to, the undivided half of said plantation sold by these presents is subject to a judicial mortgage for sixty-seven dollars and fifty cents, with interest and costs, in favor of J. B. Duvalde, which mortgage the said Mrs. Allain binds herself to have erased and cancelled in the shortest possible delay, which is accepted by the purchaser.

Thus done and passed in my office on this ninth day of May, eighteen hundred and seventy-one, in presence of Theodule Buisson and George Guinault, competent witnesses, residing in this city, who have signed these presents, together with the parties and me, notary, after a due reading of the whole.

At the moment of signing the foregoing act, the parties agree and covenant that should Mr. Aymar, before the expiration of the four years contemplated for the entire erasure of thirty-three thousand dollars, sell or convey the Australia plantation, or any part thereof, he will then be bound to cause to be erased immediately the above
36 mortgage of thirty-three thousand dollars to the extent of the amount of such of the notes representing the said mortgage claim of thirty-three thousand dollars as will then be due and exigible.

(Original signed) M. D. ALLAIN.
WILLIAM H. AYMAR.
GEO. GUINAULT.
TH. BUISSON.

JOSEPH CUVILLIER,
Not. Pub.

A true copy from the original.
[SEAL.] (Signed) JOSEPH CUVILLIER,
Not. Pub.

Exhibit D.—Filed January 21, 1873.

$11,000.] NEW ORLEANS, 3*d July*, 1869.

Three years after date promise to pay to the order of myself, at the Citizens' B'k of Louisiana, in this city, the sum of eleven thousand dollars and no cents, with interest at the rate of six per cent. per annum from date until maturity, and if not then paid to bear interest therefrom at eight per cent. per annum until paid, for value received, said six per cent. interest being payable annually.

(Signed) M. D. ALLAIN.

To authorize Mrs. Allain—

J. ALLAIN, JR.,
Per Power of Attorney.

(Across the face:)
Ne varietur. Secured by mortgage, duly stamped, 5 cents.
New Orleans, 3d July, 1869.
(Signed) E. G. GOTTSCHALK.

37 (On the reverse:) $5.50 in U. S. rev. stamps.
(Indorsed:) Pay Amos B. Merrill or order.

M. D. ALLAIN.

Pay to the order of Oakes Ames, without recourse.

AMOS B. MERRILL.

Rec'd one year's interest on this note.
Received the second year's interest.
Without recourse to me, pay to order of Oakes Ames, for collection on account of National Bank of Republic of Boston.

CHAS. VEALLAR. (Erased.)

Exhibit E.—Filed January 21, 1873.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest, be it known that on this sixth day of July, in the year one thousand eight hundred and seventy-two, at the request of the State National Bank of New Orleans, holders of the original note, whereof a true copy is on the reverse hereof written,

I, Theodore Guyol, a notary public in and for the city and parish
38 of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented the said note to the proper officer at the Citizens' Bank of Louisiana, in this city, where it is made payable, and demanded payment thereof, and was answered that no funds had been deposited there to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Armand Guyol and John Steiner, witnesses.

(Signed) THEO. GUYOL, *Not. Pub.*
ARMAND GUYOL.
JOHN STEINER.

A true copy of the original.
[SEAL.] (S'g'd) THEO. GUYOL,
Not. Pub.

$11,000.00.] NEW ORLEANS, 3 *July*, 1869.

Three years after date promise to pay to the order of myself,
39 at the Citizens' Bank of Louisiana, in this city, the sum of eleven thousand dollars and no cents, with interest at the rate of six per cent. per annum from date until maturity, and if not then paid to bear interest therefrom at eight per cent. per annum until paid, for value received; said six per cent. being payable annually.

M. D. ALLAIN.

To authorize Mrs. Allain.

J. ALLAIN, JR.,
Per Power of Attorney.

(Across the face:) Ne varietur. Secured by mortgage duly stamped, 5 cents.
New Orleans, 3d July, 1869.

E. G. GOTTSCHALK, *N. P.*

(Endorsed:)
Pay Amos B. Merrill or order.

M. D. ALLAIN.

Pay to the order of Oakes Ames without recourse.

AMOS B. MERRILL.

Rec'd one year's interest on this note.
Rec'd the second year's interest. Without recourse to me.

OAKES AMES.

Pay to the order of C. L. C. Dupuy, esq., cashier for collection on account of National Bank of the Republic, of Boston.

CHAS. VIALLES, *Cash.*

Subpœna in chancery to Mrs. Margaret or Marguerite D. Allain.—Issued 21st day of January, 1873.

UNITED STATES OF AMERICA:

40 The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Mrs. Margaret or Marguerite D. Allain, wife of Sosthene Allain, and a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1873, then and there to answer a bill in chancery, filed against her and others, wherein Frank M. Ames, a citizen of the State of Massachusetts, is complainant, and said Mrs. Margaret or Marguerite D. Allain and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 21 day of January, in the year of our Lord one thousand eight hundred and seventy-three, and the 97th year of American Independence.

[SEAL.] (S'g'd) F. B. VINOT,
Dy Clerk.

41 The defendant is hereby notified that she is required to enter her appearance in the clerk's office of the United States circuit court, on or before the first Monday of March, 1873, otherwise the bill may be taken pro confesso.

(S'g'd) B. F. VINOT,
Dy Clerk.

Marshal's return.

Received, Jan'y 22, 1873, by the U. S. marshal, and on the 27th day of the same month and year served a copy of the within subpœna in chancery on Mrs. M. D. Allain, named herein, by handing the same to her in person at her domicile, in the parish of West Baton Rouge, distant 116 miles from New Orleans.

Feb'y 1st, 1873.

(Signed) HENRY SCHORTEN,
Dy U. S. Marshal.

Subpœna in chancery to Sosthene Allain.—Issued January 21st, 1873.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summone Sosthene Allain, a citi-
42 zen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1873, then and there to answer a bill in chancery, filed against him and others, wherein Frank M. Ames, a citizen of the State of Massachusetts, is complainant, and said Sosthene Allain and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 21 day of January, in the year of our Lord one thousand eight hundred and seventy-three, and the 97th year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday of March, 1873, otherwise the bill may
43 be taken pro confesso.

(Signed) F. B. VINOT.
D'y Clerk.

Marsal's return.

Received January 22, 1873, by the U. S. marshal, and on the 27th day of the same month and year served a copy of the within subpœna in chancery on Sosthene Allain, named herein, by handing him the same in person at his domicile in the parish of West Baton Rouge, distant 116 miles from New Orleans, La.

Feb'y 1st, 1873.

(S'g'd) HENRY SCHORTEN,
D'y U. S. Marshal.

Subpœna in chancery to William H. Aymer.—Issued January 21st, 1873.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon William H. Aymer, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of March, 1873,
44 then and there to answer a bill in chancery, filed against him and others, wherein Frank M. Ames, a citizen of the State of Massachusetts, is complainant, and said William H. Aymar and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 21st day of January, in the year of our Lord one thousand eight hundred and seventy-three, and the 97th year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of March, 1873, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

45 *Marshal's return.*

Received January 22, 1873, by the U. S. marshal, and on the 27th day of the same month and year served a copy of the within subpœna in chancery on W. H. Aymar, named herein, by leaving the same at his domicile, in the parish of West Baton Rouge, distant 116 miles from New Orleans, in the hands of his brother, Charles Aymar, a person above the age of 14, the said W. H. Aymar being absent from his domicile at the time of service. These facts I learned by interrogating the said Charles Aymar.

Feb'y 1st, 1873.

(S'g'd) HENRY SCHORTEN,
D'y U. S. Marshal.

Entry at rules.—Extract from chancery order book, March 3d, 1873.

FRANK M. AMES
vs.
MARGARET D. ALLAIN & AL. } 6894.

The defendants herein, by their solicitors, Lacey & Butler, have this day entered their appearance to the complainant's bill.

Answer.—Filed May 24, 1873.

46 United States circuit court, district of Louisiana.

FRANK M. AMES
vs.
MARGARET D. ALLAIN & OTHERS. } No. 6894.

And now before the court come the defendants, and for answer to complainant's bill say:

True it is, as alleged in said bill, that on the third day of July, 1869, Amos B. Merrill, a citizen of the State of Massachusetts, sold and conveyed to Marguerite D. Allain, wife of Sosthenes Allain, the tract of land and plantation described in said bill, known as the Australia plantation, together with all and singular the buildings and improvements thereon as particularly mentioned and set forth in said bill, and all the personal property and effects on said plantation, and all the cattle, mules, horses, stock, wagons, tools, harness, and agricultural implements, &c., of whatever nature and kind, upon the terms and for the

price stated in plaintiff's bill of complaint, with the various stipulations and agreements mentioned therein.

47 That to secure the payment of the price of said property the purchaser thereof made and executed the mortgage as evidenced by the notarial act designated as Exhibit A, and annexed to plaintiff's bill of complaint.

That said act of sale was duly recorded in the record of mortgages in the parish of West Baton Rouge on the 20th day of July, 1869.

That true it is that said Marguerite D. Allain did sell and convey to defendant, William H. Aymar, said Australia plantation and the property thereunto attached, as alleged in said bill of complaint, the said Aymar assuming to pay the price and otherwise to place himself in the place and stead of his vendor, as shown by Exhibits B and C, annexed to plaintiff's bill of complaint.

That the note referred to in said bill falling due three years after date was specially endorsed to Amos B. Merrill under the signature of said M. D. Allain, and was specially endorsed to Oakes Ames, and by him endorsed in blank, without recourse and for value, before maturity came into the hands of complainant, who is the legal holder thereof,

48 and of the accessory rights of privilege and mortgage as set forth in said bill and in the exhibit marked D, annexed thereto.

That the note last referred to was at maturity properly presented for payment; which payment not being made, the said note was duly protested by Exhibit E, and said note is still unpaid.

Respondents, further answering, agree that an account be taken, showing the amount due to complainant, as prayed for in said

Respondents will ever pray, &c.

(Signed) LACEY & BUTLER,
Solicitors for Respondents.

Entry at rules.—Extracts from chancery order-book, May 24, 1873.

FRANK M. AMES
vs.
MARG. D. ALLAIN & AL. } 6894.

The defendants, by their solicitors, Lacey & Butler, have this day filed their answer to the complainant's bill of complaint.

49 SAME
vs.
SAME. } 6894.

Complainant comes, by Race Foster & E. T. Merrick, his counsel, and sets this cause for hearing on the answer filed.

Decree.—Entered May 24, 1873.

Circuit court. In chancery.

FRANK M. AMES
vs.
MARGARET D. ALLAIN, WIFE OF SOSTHENE Allain, Sosthene Allain, and William H. Aymer. } No. 6894.

This cause came on to be heard on bill, answer, and exhibits at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed by the court, as follows,

viz: That the said mortgage in favor of said complainant, Frank M. Ames, for the amount of said mortgage note held by him, viz, for the sum of eleven thousand dollars, with one year's interest thereon at six per cent., and the residue of the interest on said promissory note
50 at *at* eight per cent. per annum from the 3d day of July, A. D. 1871, until paid; and for attorney's fees at five per cent. on the said sum and interest and costs, upon the said Australia plantation, situated partly in the parish of West Baton Rouge, La., and partly in the parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon and forming the point known as Point Manchac, said tract of land being cultivated as a sugar plantation, known as the "Australia plantation," bounded on the upper line by the land of Valsin Tullier (exclusive of the Brackin tract, containing about ninety acres), containing in all about fifteen hundred and one $\frac{34}{100}$ acres, or seventeen hundred and seventy-four superficial arpents and fifty-three hundredths of an arpent, and being composed of different tracts acquired by said Sosthene Allain, as per plan of said plantation surveyed by August Wrotnowski, in March, A. D. 1860; said plan being or having been in the hands of Felix Grima, a notary public in the parish of Orleans, together with all and singular the buildings and
51 improvements thereon, consisting of a brick sugar-house and mill with slated roof, machinery, dwelling-house, and out-houses, negro quarters, stables, and other improvements and appurtenances thereto belonging or in anywise appertaining, and also all rights and ways and immunities thereto belonging, and all the personal property and effects on said plantation, and all the cattles, mules, horses, stock, wagons, tools, harness, and agricultural implements, &c., of whatever nature or kind now on said plantation, be recognized and declared executory thereon.

And it is further ordered, adjudged and decreed that said tract of land, with its fixtures and appurtenances aforesaid, be seized and sold according to law, and after the usual advertisement for real estate to pay said sum of eleven thousand dollars, interest as aforesaid, five per cent. attorneys' fees, and costs of copies and costs of suit, and that execution issue accordingly. And it is further ordered, adjudged and decreed that if the sale of said mortgage property shall fail to produce enough
52 (reference being had to the other mortgage notes outstanding) to pay and satisfy said promissory note held by complainant for $11,000 and interest, and five per cent. attorneys' fees and costs, it is ordered, adjudged and decreed that execution issue against both said William H. Aymer and Margaret D. Allain, and each of them, for any balance of debts, interest, attorneys' fees aforesaid, and costs which may be due the complainant over and above that portion of the proceeds of the sale of said mortgaged premises to be applied to said debt, interest, fees, and costs due complainants.

(Act of transfer, decree, and subrogation are missing, and after due and diligent search cannot be found.)

53 *Order to issue writ.—Filed June* 19, 1876.

FRANK M. AMES, E. J. GAY, SUBROGEE, *vs.* MARGARET D. ALLAIN ET AL. } No. 6894.

The clerk will please issue an execution on the decree in this case, in

favor of plaintiff, for benefit of E. J. Gay, subrogee, and owner of the judgment.

June 17, 1876.

(Signed) MERRICK, RACE & FOSTER.

Writ of seizure and sale.—Copy of decree annexed, and marshal's return thereon.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit and district of Louisiana.

FRANK M. AMES
vs.
MARGARET D. ALLAIN, WIFE OF SOSTHÉNE Allain et al. } No. 6894.

The President of the United States to the marshal of the United States for the district of Louisiana, greeting:

54 You are hereby commanded to seize and sell, according to law, the following described property, to wit: A certain plantation known as the "Australia Plantation," situated partly in the parish of West Baton Rouge, Louisiana, and partly in the parish of Iberville, in the State of Louisiana, on the right bank of the Mississippi River, fronting thereon, and forming the point known as Point Manchac, said tract of land being cultivated as a sugar plantation, bounded on the upper line by the land of Valsin Tullier (exclusive of the Brackin tract, containing about ninety acres), containing in all about fifteen hundred and one $\frac{34}{100}$ acres, or seventeen hundred and seventy-four superficial arpents and fifty-three hundredths of an arpent, and being composed of different tracts acquired by Sosthéne Allain, as per plan of said plantation surveyed by August Wrotnowski, in March, A. D. 1860, said plan being, or having been, in the hands of Felix Grima, a notary public in the parish of Orleans, together with all and singular the build-
55 ings and improvements thereon, consisting of a brick sugar-house and mill with slated roof, machinery, dwelling house and out-houses, negro quarters, stables and other improvements and appurtenances thereto belonging or in any wise appertaining, and also all the rights, ways, and immunities thereto belonging, and all the personal property and effects on said plantation, and all the cattle, mules, horses, stock, wagons, tools, harness and agricultural implements, &c., of whatever nature or kind on said plantation, to satisfy Edward J. Gay, subrogated to all the rights of the plaintiff Frank M. Ames in and to a certain decree rendered in favor of the said Frank M. Ames for the sum of eleven thousand dollars, with interest thereon, attorneys' fees at five per cent. on the said sum, and interest and costs, a duly certified copy of which decree is hereto annexed and made part of this writ.

And what you do in the premises you make due return thereof, together with this writ, to our said court, according to law.

Witness the honorable Morrison R. Waite, Chief Justice of the
56 Supreme Court of the United States of America, this 19th day of June, A. D. 1876.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received June 10, 1876, by the U. S. marshal, and on the 20th day of June, 1876, I seized and took into my possession the within described property, and placed Jno. R. Berry keeper, and on the 20th day of June, 1876, served a copy of the within notice of seizure, as per notice of seizure hereto attached and made part of this return, on Mrs. E. T. R. Peniston, wife of Fergus Peniston, Miss Victoria E. Allain and Wm. H. Aymar, each in person (as per return hereto attached,) and after the legal delay had expired, the said within described property was advertised for sale on the 22d day of July, 1876, in the following manner, to wit: By advertisements composed in English, announcing the sale to take place at the court house in the parish of West Baton Rouge, in the State of Louisiana, on the 2d day of September, 1876, at 12 o'clock m. Said advertisements were inserted and published
57 in English in the Sugar Planter, a paper published in the parish of West Paton Rouge, and also in the Iberville Republican, a paper published in the parish of Iberville, La., to wit: In the Sugar Planter and Iberville Republican from the said 24th day of July, 1876, to the day of sale, being full thirty days from the date of the first notice given in said newspaper; said advertisements were inserted and published in said newspapers on the following days, to wit, July 22, 29; Aug. 5, 12, 19, 26, and Sept. 2, 1876; and after having further complied with and performed all the additional previous legal requisites, and after the appraisers, F. Gallagher, on behalf of the plaintiffs, and A. O. Dubury, on behalf of all the defendants, being duly sworn, &c., did appraise said within described property at the sum of twenty-eight thousand dollars ($28,000.00) and no more, I did expose the same at public auction according to law, on Saturday, the 2d day of September, 1876, at 12 o'clock m. at the court-house, parish of West Baton Rouge, La., and having first read the advertisements in a loud & audible voice
58 and then the certificates of the recorder of mortgages for the Parishes of Iberville and West Baton Rouge, of State of Louisiana, delivered on the day of sale, & showing the mortgages existing at the time of sale against the said property, I then proceeded to offer the said property for sale by crying the same at public auction, and continued so to do for a sufficient length of time, when Chas. E. Alter, esq., being the highest and last bidder, the said within described property was adjudicated to the said Charles E. Alter, for the price and sum of twenty-eight thousand and eight hundred dollars, ($28,800.00) Of the said amount I paid all the taxes due to the day of sale, which amounted to $1,711.15. And I also paid on account of clerk's costs 47.20 and retained in my hands on account of marshal's costs 733.83. Total 2,492.18.

I then deposited the balance of the purchase price, twenty-six thousand three hundred and seven $\frac{82}{100}$ dollars ($26,307 $\frac{82}{100}$) in the
59 sub-treasury, to the order of Hon. W. B. Woods, judge of the U. S. circuit court. I hereby return this writ as above set forth.

(Signed) C. R. STEELE,
D'y Marshal.

United States marshal's sale.

In the *the* United States circuit court for the fifth circuit and district of Louisiana.

FRANK M. AMES
vs.
MARGARET D. ALLAIN, WIFE OF SOSTHENE Allain, et al. } No. 6894.

By virtue of a writ of seizure and sale to me directed in the above-entitled suit, I will proceed to sell to the highest bidder, on Saturday, the 5th day of August, 1876, at twelve (12) o'clock m., at the court-house in the parish of West Baton Rouge, the following described property, viz:

A certain plantation known as the Australia Plantation, situated partly in the parish of West Baton Rouge, La., and partly in the parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon and forming the point known as Point Manchac (said tract of land being cultivated as a sugar plantation), bounded on
60 the upper line by the land of Valsin Tullier (exclusive of the Brockin tract containing about ninety acres), containing in all about fifteen hundred and one $\frac{34}{100}$ acres, or seventeen hundred and seventy-four superficial arpents and $\frac{53}{100}$ of an arpent, and being composed of different tracts acquired by Sosthene Allain as her plan of said plantation, surveyed by Auguste Wrotnowski in March, A. D. 1860, said plan being, or having been, in the hands of Felix Grima, notary public in the parish of New Orleans, together with all and singular the buildings and improvements thereon, consisting of a brick sugar-house and mill, with slated roof, machinery, dwelling-house, and out-houses, negro quarters, stables, and other improvements and appurtenances thereto belonging or in anywise appertaining.

The above-described property will be divided into lots of not less than ten nor more than fifty acres before sale, and sold accordingly.

Terms: Cash on the spot in U. S. Treasury notes.

U. S. Marshal's Office, New Orleans, June 29, 1876.

(S'g'd) S. B. PACKARD,
U. S. Marshal, Dist. of Louisiana.

61 U. S. circuit court, district of Louisiana.

FRANK M. AMES
vs.
MARGARET D. ALLAIN, WIFE, &C. } No. 6894.

To Mrs. E. T. Allain Peniston, Miss Victoria E. Allain, William H. Aymar:

You are hereby notified that by virtue of a writ of seizure and sale issued out of the above-named court, in the above-entitled and numbered suit, and to me directed, I have this day seized and taken into my possession the following-described property to pay and satisfy the said writ, amounting to the sum of $12,000.00 or thereabouts:

Description of property.

A certain plantation known as the Australia Plantation, situated

partly in the parish of West Baton Rouge, La., and partly in the parish of Iberville, in the State of La., on the right bank of the Mississippi River, fronting thereon and forming the point known as Point Manchac, said tract of land being cultivated as a sugar plantation,
62 bounded on the upper line by the land of Valsin Tullier (exclusive of the Brockin tract, containing about ninety acres), containing in all about fifteen hundred and one $\frac{24}{100}$ acres, or seventeen hundred and seventy-four superficial arpents and fifty-three hundredths of an arpent, and being composed of different tracts acquired by Sosthene Allain, as per plan of said plantation surveyed by August Wrotnowski in March, A. D. 1860, said plan being, or having been, in the hands of Felix Gr'ma, a not. pub. in the parish of Orleans, together with all and singular the buildings and improvements thereon.

New Orleans, June 19, 1876.

(Signed) C. R. STEELE,
D'y Marshal.

Issued 19th of June, 1876, by the U. S. marshal. On the 20th day of June served a copy hereof on the within-named Mrs. E. T. A. Peniston by handing the same to her in person, & on Miss Victoria E. Allain by handing the same to her in person, and on the 24th day of June, 1876, served a copy hereof on Wm. H. Aymar, by handing the same to
63 him in person in the parish of St. James, La.

(Signed) JNO. R. BERRY,
U. S. Marshal.

Charles E. Alter's bill of complaint, in the nature of a bill of intervention.—Filed July 11th, 1876.

FRANK M. AMES, EDWARD J. GAY, SUBROGATED, *vs.* MARGARET D. ALLAIN, WIFE OF SOSTHENE Allain, et al. } No. 6894.

Before the United States circuit court for the district of Louisiana.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

Charles E. Alter, a citizen of the State of Louisiana, and a resident of the city of New Orleans, brings this his bill of complaint, in the nature of a bill of intervention, against the parties to this suit, viz, Edward J. Gay, subrogated to the right of Frank M. Ames; Mrs. Emma Felicia Allain Peniston, wife of Fergus Peniston, and Miss Victoria Elizabeth Allain, the children and sole heirs of Margaret D. Allain,
64 deceased, all citizens of the State of Louisiana, and William Henry Aymar, a citizen of the kingdom of England and resident of this State, and against Andrew K. Brown and Charles Whiting, testamentary executors of Geo. F. Miller, citizens of Louisiana, and against S. B. Packard, citizen of Louisiana and United States marshal for the district of Louisiana.

And thereupon your orator complains and says:

Art. I. That on the 24th May, 1873, Frank M. Ames, the plaintiff in the above-entitled suit, obtained a judgment whereby it was ordered, adjudged, and decreed:

"That the said mortgage in favor of said complainant, Frank M.

Ames, for the amount of said mortgage-note held by him, viz, for the sum of eleven thousand dollars, with one year's interest thereon at six per cent., and the residue of the interest on said promissory note at eight per cent. per annum from the 3d day of July, A. D. 1871, until paid, and for attorneys' fees, at five per cent. on the
65 said sum and interest and costs upon the said Australia Plantation, situated partly in the parish of West Baton Rouge, La., and Iberville, in this State, on the right bank of the Mississippi River, fronting thereon and forming the point known as Point Manchac, said tract of land being cultivated as a sugar plantation, known as the Australia Plantation, bounded on the upper line by the land of Valsin Tullier, (exclusive of the Brackin tract containing about ninety acres,) containing in all about fifteen hundred and one $\frac{34}{100}$ acres, or seventeen hundred and seventy-four superficial arpents and fifty-three hundredths of an arpent, and being composed of different tracts acquired by Sosthene Allain, as per plan of said plantation, surveyed by August Wrotnowski, in March, A. D. 1860, said plan being, or having been in the hands of Felix Grima, a notary public in the parish of Orleans, together with all and singular the buildings and improvements thereon, consisting of a brick sugar house and mill with slated roof, machinery, dwelling house and out houses, negro quarters, stables and other im-
66 provements and appurtenances thereto belonging, or in any wise appertaining and also all rights and ways and immunities thereto belonging, and all the personal property and effects on said plantation, and all the cattle, mules, horses, stock, wagons, tools, harness and agricultural implements, &c., of whatever nature or kind now on said plantation, be recognized and declared executory thereon.

"And it is further ordered, adjudged and decreed that said tract of land, with its fixtures and appurtenances aforesaid, be seized and sold according to law, and after the usual advertisements for real estate, to pay said sum of eleven thousand dollars, interest as aforesaid, five per cent. attorney's fees, and cost of copies, and cost of suit, and that execution issue accordingly; and it is further ordered, adjudged and decreed, that if the sale of said mortgage property shall fail to produce enough (reference being had to the other mortgage notes outstanding) to pay and satisfy said promissory note held by complainant for $11,000 and interest, and five per cent. attorney's fees and costs, it is
67 ordered, adjudged and decreed that execution issue against both William A. Aymar and Margaret D. Allain, and each of them, for any balance, debt, interest, attorney's fees aforesaid, and costs which may be due the complainant over and above that portion of the proceeds of the sales of said mortgaged premises, to be applied to said debt, interest, fees and costs due complainants."

Art. II. And subsequently the plaintiff transferred the judgment to Edward J. Gay, who, on the 19th of June, 1876, issued a writ of execution and caused the marshal for this district to seize and advertise for sale the property described in said judgment to satisfy said judgment, a copy of which advertisement, marked Exhibit A, is hereto annexed and made a part of this bill.

Art. III. Your orator shows that the said judgment was rendered upon a note made by Mrs. M. D. Allain for $11,000, payable at three years after date, with interest, secured by mortgage on the plantation described in said decree, and more fully described in an act of sale
68 made by Amos B. Merrill to Mar. D. Allain, on 3d July, 1869, as appeared by Exhibit B hereto annexed and made a part of this bill.

Art. IV. Your orator shows that by said act of sale Mrs. Allain, as part of the purchase price, made and delivered to her vendor, Amos B. Merrill, three promissory notes made by her, to her own order and by her endorsed, each for $11,000, payable respectively at one, two, and three years after date, with interest at six per cent. per annum from date until maturity, and thereafter, if not then paid, at the rate of eight per cent. per annum, and concurrently secured by vendor's lien and by mortgage, as fully appears by Exhibit B hereto annexed and made a part hereof, which lien and mortgage was recorded in the recorder's office for the parish of West Baton Rouge, on the 20th July, 1869, in record of mortgage No. 1, fo's 79, 80, 81, entry No. 431, and in the office of the recorder of mortgages for the parish of Iberville, in book No. 9, entry No. 310.

69 Art. V. Your orator shows that the note payable at one year was, after its maturity, paid, cancelled, and annulled by Wm. H. Aymar, who had assumed the payment of it, by an act before Selim Magner, notary public for the parish of Orleans, dated 7th July, 1869, that the note payable at three years is the one upon which Frank M. Ames obtained his judgment; that the third note, payable two years after date, was, by an act before Andrew Hero, jr., dated 14th July, 1871, sold and transferred by Amos B. Merrill to your orator, as will appear by a copy of the act hereto annexed and made a part hereof, and marked Exhibit C.

Art. VI. Your orator shows that on the 13th day of May, 1876, he instituted suit upon said note against the sole heirs and legal representatives of Mrs. Margaret D. Allain, deceased, to wit, Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, and Miss Victoria Elizabeth Allain, before the fifth district court for the parish of Orleans,

70 No. 7415; that on the 19th May, 1876, they were cited, and subsequently your orator obtained a judgment against them jointly and in solido, for the sum of eleven thousand dollars, with interest, at the rate of eight per cent. per annum, from the 14th January, 1872, until paid, and five per cent. attorney's fees on principal and interest, and costs, with vendor's lien and right of mortgage on the property described in Exhibit B.

VII. Your orator shows that the said William H. Aymar, a citizen of England, by act dated 7th July, 1869, before Selim Magner, a notary public for the parish of Orleans, assumed the payment of the aforesaid note held and owned by your orator, and now amounting to eleven thousand dollars, with interest, at the rate of eight per cent. per annum, from 14th January, 1872, until paid, and five per cent. attorney's fees on principal and interest, and costs, as will appear by Exhibit D, hereto annexed and made a part of this bill.

71 Your orator shows that he is informed and verily believes that the first note herein described, (the one payable in one year after date), was at or after its maturity paid, cancelled and annulled by William H. Aymar, as hereinbefore stated, and thereby the mortgage by which it was secured became cancelled to the extent of that note. But, nevertheless, the said William H. Aymar wrongfully delivered it to George F. Miller, who instituted suit against said Aymar in the district court for the parish of St. James; that said W. H. Aymar purposely made no defense thereto, and permitted judgment to be rendered on the December term of 1875 against him for eleven thousand dollars, with interest at six per cent. per annum thereon from 3d July, 1869, to the 6th July, 1870, and at the rate of eight per cent. per annum from 6th July, 1870, till paid, and five per cent. for attorney's fees on said sum and in-

terest and costs of suit, and to secure the payment of said sum & interest and attorney's fees a mortgage and vendor's privilege be rec-
72 ognized in favor of said George F. Miller on the Australia plantation, situated partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, & more fully described in the act of sale before S. Magner, in New Orleans, on 7th July, 1869, and that said property be sold to pay & satisfy said claim in principal, interest and attorney's fees.

Art. VIII. Your orator charges that the said judgment is a fraud upon your orator & others who hold mortgages on the aforesaid property; that the said George F. Miller and William H. Aymar, fraudulently confederated together in procuring the rendition of said judgment and the recognition of the mortgage.

Art. IX, That the said George F. Miller has since died, and Andrew K. Brown and Charles Whiting, citizens of this State, are his executors.

Art. X. Your orator shows that he is informed, believes and
73 charges that on or about the 3d June, 1874, Frank M. Ames, sold the aforesaid judgment, rendered in his favor, to Henry P. Redmond and Frederick Eastman, purchasing for the defendant, William H. Aymar, for the price of eight thousand dollars—three thousand dollars, of which was paid on or about the 3d June, 1874, and the balance to be paid thereafter, and consequently there can only be due on said judgment the sum of five thousand dollars.

Art. XI. Your orator shows that notwithstanding the existence of these facts, that were well known to Edward J. Gay at the time the transfer was made to him, he, the said Gay, has wrongfully issued a writ commanding the United States marshal for this district to seize and sell, according to law, the aforesaid plantation, known as the Australia plantation, to satisfy the full amount of said judgment, as will appear by a copy of the advertisement hereto annexed and made a part of this bill.

74 And your orator shows that the said Edward J. Gay, subrogated to the rights of Frank M. Ames, is wrongfully proceeding to sell said property in lots of not less than ten nor more than fifty acres—whereas it should be sold in block, as mortgaged, to secure the note held and owned by your orator.

And your orator shows that the sale in lots will be greatly to his prejudice and injury, inasmuch as the sugar-house and dwelling on the plantation and the quarters thereon are of little value without the surrounding land, and the surrounding land is of little value without the sugar-house, dwelling, and quarters.

Art. XII. The premises considered, your orator prays that it be decreed:

1st. That the note made by Mrs. Margaret D. Allain, and by her endorsed, for eleven thousand dollars, dated 3d July, 1869, payable one year after date, with interest thereon at the rate of six per cent.
75 per annum from date until maturity and thereafter at the rate of eight per cent. per annum, and the mortgage granted to secure it, has been extinguished, cancelled, and annulled; that the recorders of mortgages in and for the parishes of Iberville and West Baton Rouge be ordered to cancel and erase the mortgage from the records of their offices.

2d. That the amount due on the judgment rendered by the circuit court for the fifth circuit and district of Louisiana, in the suit of Frank M. Ames vs. Margaret D. Allain, wife of Sosthene Allain, and Wm. A. Aymar, No. 6894, be reduced to five thousand dollars.

3d. That Edward J. Gay, subrogated to the rights of Frank M. Ames and the United States marshal for the district of Louisiana, be enjoined from selling the property seized by him and described in Exhibit A, in lots of not less than ten acres nor more than fifty acres.

4th. That the property be sold in block.

5th. That the United States marshal be ordered to retain in his
76 hands the proceeds of sale, to be brought into court for distribution.

6th. That executory process issue against the property described in the aforesaid act made before Edward G. Gottschalk, notary public for the city of New Orleans, by Amos B. Merrill to Margaret D. Allain, which is hereto annexed and marked Exhibit B; and in the act made before Selim Magner by Mrs. Allain, to W. Henry Aymar, dated 7th July, 1869, a copy of which is hereto annexed and marked Exhibit D, and which is described as follows:

"A certain tract of land or plantation situate and being partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon and forming the point known as Point Manchac, opposite Bayou Manchac, said tract of land being cultivated as a sugar plantation, known as the Australia plantation, bounded on the upper line by lands of Valsin Tullier, (exclusive of the Brackin tract, containing about ninety
77 acres (containing in all an area of fifteen hundred and one $\frac{34}{100}$ acres (1,501 $\frac{34}{100}$), or seventeen hundred and seventy-four superficial arpents and $\frac{53}{100}$ of an arpent; and being composed of different tracts of land acquired by said Sosthene Allain as per plan of said plantation, as surveyed by Auguste Wrotnowski in March, 1860; said plan being now in the hands of Felix Grima, a notary public in this city.

"Together with all and singular the buildings and improvements thereon, consisting of a brick sugar-house and mill with slated roof, machinery, dwelling-house, and out-houses, negro quarters, barns, stables, and other improvements and appurtenances thereunto belonging or in anywise appertaining; and also all rights, ways, and immunities thereto belonging; all the personal property and effects on said plantation, and all the cattle, mules, horses, stock, wagons, tools, harness, and agricultural implements, &c., of whatever nature or kind now on
78 said plantation; which plantation and appurtenances were acquired by said Merrill by purchase from Sosthene Allain and wife, per act passed before me, notary, on the 3d day of July, 1869."

That the marshal be ordered to sell said property in block and for cash, and that he retain in his hands the proceeds of the sale for distribution, and until the further order of the court.

May it please your honors to authorize Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, to defend this suit, her husband being out of the jurisdiction of the court, and grant unto your orator a writ of subpœna to be directed to the said Edward J. Gay, subrogated to the rights of Frank M. Ames, Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, and Miss Victoria Elizabeth Allain, William Henry Aymar, Andrew K. Brown, and Charles Whiting, testamentary executors of George F. Miller; and S. B. Packard, United States mar-
79 shal for the district of Louisiana, commanding them and each of them, at a certain time, and under a certain penalty therein to be limited, personally to appear before this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to this honorable court shall seem agreeable to equity and good conscience.

And that the plaintiff may have such further or other relief in the premises as the nature of the circumstances of this case may require.

(Signed) GEO. L. BRIGHT,
Solicitor for Ch's E. Alter.

Affidavit.

United States circuit court, district of Louisiana.

FRANK M. AMES, EDWARD J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN, WIFE OF SOSTHENE Allain, and Wm. H. Aymar. } No. 6894.

STATE OF LOUISIANA.
City of New Orleans:

80 On this day of July, 1876, before me personally appeared Charles E. Alter, the plaintiff in the foregoing bill, and made oath that he has read the above bill subscribed by him, and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated to be on his information and belief, and that as to those matters he believes it to be true.

(Signed) CHAS. E. ALTER.

Sworn and subscribed before me, this 11th day of July, 1876.

(Signed) F. B. VINOT,
U. S. Comm'r.

In equity. United States circuit court, for the district of Louisiana.

FRANK M. AMES, EDWARD J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN, and others. } No. 6894.

To Mr. Edward J. Gay, subrogated to the rights of Frank M. Ames:

SIR: Take notice that Charles E. Alter will apply to Judge Woods, circuit judge for the district of Louisiana, wherever he can
81 be found, and, if not found, to Judge E. C. Billings, district judge, acting as circuit judge, for an order restraining you from selling in lots of not less than ten nor more than fifty acres, the property seized by you in the above-entitled cause, and will apply also for the granting of the prayer in the bill of said Charles E. Alter, this day filed in the above-entitled cause.

New Orleans, July 12, 1876.

(Signed) GEO. L. BRIGHT,
Solicitor for Ch's E. Alter.

Filed July 25th, 1876.

Served a duplicate of this notice on Ed. J. Gay, by leaving it at his

N. O., July 12, 1876.

(S'g'd) G. L. BRIGHT.

Order.—Filed July 25, 1876.

Let the foregoing bill, in the nature of an intervention, be filed. Let a restraining order issue to Edward J. Gay, subrogated to the rights of Frank M. Ames and S. B. Packard, United States marshal for the district of Louisiana, enjoining and restraining them as prayed for in the bill of complaint; which said restraining order shall remain in
82 force until the next term of this court, to wit, the 3d Monday of November next, or until the further order of the court or a judge thereof.

And it is further ordered that the motion for an injunction in this case, as prayed for in the bill, be set down for hearing at 10 o'clock a. m. on the 3d Monday of November next, and that reasonable notice of said time and place for hearing said motion be given to defendants by service of a copy of this order.

July 17, 1876.

(Signed) W. B. WOODS,
U. S. Circuit Judge.

Exhibit A.—Filed with Chas. E. Alter's bill.

United States marshal's sale.

FRANK M. AMES
vs.
MARGARET D. ALLAIN, WIFE OF SOSTHENE Allain, et al. } No. 6894.

In the United States circuit court for the fifth circuit and district of Louisiana.

83 By virtue of a writ of seizure and sale to me directed in the above entitled suit I will proceed to sell to the highest bidder, on Saturday, the 5th day of August, 1876, at twelve (12) o'clock m., at the court-house, in the parish of West Baton Rouge, the following described property, viz:

A certain plantation known as the Australia Plantation, situated partly in the parish of West Baton Rouge, Louisiana, and partly in the parish of Iberville, in the State of Louisiana, on the right bank of the Mississippi River, fronting thereon and forming the point known as Point Manchac, said tract of land being cultivated as a sugar plantation, bounded on the upper line by the land of Valsin Tullier (exclusive of the Brackin tract, containing about ninety acres), containing in all about fifteen hundred and one $\frac{24}{100}$ acres, or seventeen hundred and seventy-four superficial arpents and fifty-three-hundredths of an arpent, and
84 being composed of different tracts acquired by Sosthene Allain, as per plan of said plantation surveyed by August Wrotnowski, in March, A. D. 1860, said plan being or having been in the hands of Felix Grima, a notary public in the parish of Orleans, together with all and singular the buildings and improvements thereon, consisting of a brick sugar-house and mill, with slated roof, machinery, dwelling-house and out-houses, negro quarters, stable, and other improvements and appurtenances thereto belonging or in anywise appertaining.

The above described property will be divided into lots of not less than ten nor more than fifty acres before sale and sold accordingly.

Terms: Cash on the spot in U. S. Treasury notes.
United States marshal's office, New Orleans, 29th day of June, 1876.
(S'g'd) S. B. PACKARD,
United States Marshal, Dist. of Louisiana.

Exhibit B.—Filed July 11th, 1876.

85 UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known, that on this third day of July, eighteen hundred and sixty-nine, before me, Edward G. Gottschalk, a notary public in and for this city and the parish of Orleans, duly commissioned and sworn in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Amos B. Merrill, Esquire, of Boston, Massachusetts, who declared that for the consideration hereinafter set forth he does by these presents grant, bargain, sell, convey, transfer, assign, and set over, with no personal warranty on his part, unto Mistress Margaret D. Allain, wife of Sosthene Allain, residing in the parish of West Baton Rouge, in this State, here present, acknowledging possession, and accepting for herself, her heirs and assigns, under the authorization of Sosthene Allain, jr., the attorney in fact of said Sosthene Allain, duly appointed per act of procuration, executed
86 in his favor by act before Henry Desobry, a notary public in the parish of Iberville, on the twenty-third day of June, eighteen hundred and sixty-nine, a certain tract of land or plantation situate and being partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon and forming the point known as "Point Manchac," opposite Bayou Manchac, said tract of land being cultivated as a sugar plantation, known as the "Australia Plantation," bounded on the upper line by lands of Valsin Tullier (exclusive of the Brackin tract, containing about ninety acres), containing in all an area of fifteen hundred and one $\frac{34}{100}$ acres, (1,501$\frac{34}{100}$), or seventeen hundred and seventy-four superficial arpents and $\frac{53}{100}$ of an arpent; and being composed of different tracts of land acquired by said Sosthene Allain, as per plan of said plantation, as surveyed by Auguste Wrotnowski, in March,
87 1860; said plan being now in the hands of Felix Grima, a notary public in this city.

Together with all and singular the buildings and improvements thereon, consisting of a brick sugar-house and mill, with slated roof, machinery, dwelling-house and out-houses, negro quarters, barns, stables, and other improvements and appurtenances thereunto belonging, or in any wise appertaining, and also all rights, ways, and immunities thereto belonging; all the personal property and effects on said plantation, and all the cattle, mules, horses, stock, wagons, tools, harness and agricultural implements, &c., of whatever nature or kind, now on said plantation. Which plantation and appurtenances were acquired by said Merrill by purchase from Sosthene Allain and wife, per act passed before me, notary, on the third day of July, 1869. The titles to which plantation are detailed and described in the said act of purchase of said Merrill, with the nature of which titles Mrs. Allain is satisfied and
88 declares herself familiar, and does hereby accept the same without any warranty on the part of said Merrill as above set forth, and renounces to any right of recourse against him in case of eviction of the real estate herein transferred to her, and binding herself to hold him, said Merrill, harmless on account of any claim which might be

brought forward in regard to the other matters and things hereby transferred to her.

To have and to hold the said plantation and appurtenances unto the said purchaser, her heirs and assigns forever.

And the said Merrill declared that he hereby sells and conveys the said plantation and appurtenances unto said Mistress Margaret D. Allain, in accordance with a decree of the district court of the United States for the district of Louisiana, at the May term of eighteen hundred and sixty-nine, in a suit wherein he, said Merrill, is the plaintiff and subrogee of the assignee in bankruptcy of A. S. Mansfield
89 and said Allain and wife are parties, and that the consideration of sale remaining unpaid is thirty-three thousand dollars, the remainder being satisfied.

Now, therefore, in payment of said sum of ($33,000.00 thirty-three thousand dollars, she, said Mistress Allain, has subscribed, under date hereof, three several promissory notes to her own order and by her indorsed, each for eleven thousand dollars, payable respectively at one, two and three years, at the Citizens' Bank of Louisiana in this city, with interest thereon at the rate of six per annum from date until maturity, and thereafter, if not then paid, until final liquidation, at the rate of eight *of eight* per cent. per annum, the current interest at six per cent. per annum being payable annually, which notes have been paraphed ne varietur by me, notary, for identification herewith, and have been delivered to said Merrill, who hereby acknowledges the receipt thereof.

90 In case of suit for the recovery of the amount of said notes, or of any part thereof, the said purchaser binds herself to pay the fees of the attorney at law who may be employed to prosecute such suit, which fees are hereby fixed at five per cent. on the amount sued for.

Now, in order to secure the full and punctual payment of said notes, and all attorney's fees, &c., vendor's lien and privilege and special mortgage in favor of the said present vendor and in that of the future holder or holders of said notes are hereby retained on the said property; the said purchaser binding herself and her heirs not to sell, alienate or encumber the the same to the prejudice of this act.

The said Mistress Allain furthermore binds herself to keep the buildings and improvements on said plantation constantly insured against loss by fire up to an amount not less than fifteen thousand dollars,
91 and to transfer the policy or policies of insurance to said vendor, who shall have the right of transferring the same in turn to any future holder or holders of said notes. And in case of failure or neglect on the part of said Mistress Allain to have such insurance effected or renewed, the holder or holders of said notes shall be authorized to do so, and the reimbursement of all premiums paid for that purpose shall be secured by the mortgage herein retained.

Said Mistress Allain does not hereby dispense with the production of the certificate of the recorders of the parishes of West Baton Rouge and Iberville, showing what mortgages or incumbrances, if any, are recorded against said property, and exonerates me, notary, from all liability in the premises. She moreover assumes the payment of all taxes in arrear or now due or coming due on said plantation, as an additional consideration of this sale.

Said Merrill declared that he is married, but that his wife is
92 a resident of Boston, in the State of Massachusetts, and has never acquired any domicil here; and that she has no right of any nature on his property.

Thus done and passed in my office, at New Orleans aforesaid, on the

day, month, and year hereinbefore written, in the presence of James Fahey and Martin L. Ainsworth, competent witnesses, who sign these presents with said appearers and me, notary, after reading thereof.

This deed, being made to carry into effect a decree of court, and without new valuable consideration, need not be stamped as a conveyance, but should be stamped as an agreement or contract.

July 6, '69.

(Signed) S. A. STOCKDALE,
Coll. Int. Rev. 1st Dist. La.

(Signed) M. D. ALLAIN.
AMOS B. MERRILL.
S. ALLAIN, JR.,
Per Power of Attorney.
JAS. FAHEY.
M. L. AINSWORTH.

(Signed) E. G. GOTTSCHALK,
Not. Pub.

A true copy.
New Orleans, 8th July, 1869.
(Signed) E. G. GOTTSCHALK,
Not. Pub.

[Seal & 5 c. I. R. stamp.]

93 STATE OF LOUISIANA,
Parish of West Baton Rouge:

RECORDER'S OFFICE.

I hereby certify that the within and foregoing act of sale and mortgage has been duly recorded in my office, July the 20th, A. D. 1869, in record of mortgages No. 1, folios 79, 80, & 81, entry No. 43.

As witness my hand and seal of office the same day and date as above.

(Signed) O. BERNARD,
Recorder.

STATE OF LOUISIANA,
Parish of W.:

I hereby certify that the within and foregoing act of sale has been duly recorded in my office, July the 20th, A. D. 1869, in book of cash sales No. 3, pages 167, 168, 169, 170, No. 78.

As witness my hand and seal of office the day and date as above.

(Signed) O. BERNARD,
Recorder.

STATE OF LOUISIANA,
Parish of Iberville:

RECORDER'S OFFICE.

I hereby certify that the within and foregoing act of sale was this day duly recorded in this office, in conveyance book No. 9, entry
94 No. 352; in mortgage book No. 9, entry No. 310.

Witness my hand and seal of office this 26th day of July, A. D. 1869.

(Signed) P. VERRET,
Recorder.

[5 cent int. rev. stamp, cancelled.]

Exhibit C.—Filed July 11th, 1876.

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that on this fourteenth day of July, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the United States of America the ninety-sixth, before me, Andrew Hero, jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Amos B. Merrill, of Boston, in the State of Massachusetts, who declared that he is the bona fide owner and possessor of a certain
95 promissory note for the sum of eleven thousand dollars, drawn by Mrs. Marguerite D. Allain, wife, of lawful age, of Sosthene Allain, of the parish of West Baton Rouge, in this State, to the order of and endorsed by herself, dated the third day of July, eighteen hundred and sixty-nine, and made payable at the Citizens' Bank of Louisiana, in this city, at two years after date, with interest thereon at the rate of six per cent. per annum from date until maturity, and thereafter, if not then paid, at the rate of eight per cent. per annum until final payment; said six per cent. interest per annum being payable annually; said note being the second maturing of a series of three which were given by said Mrs. Allain unto said Merrill in part payment of the following described property, and secured by special mortgage thereon, together with the clause of "non aleenando," as per the act of sale thereof passed
96 before Edward G. Gottschalk, a notary in this city, on the third day of July, eighteen hundred and sixty-nine, viz:

A certain tract of land or plantation, together with the brick sugar mill with slated roof, machinery, dwelling-house, out-houses, cabins, negro-quarters, barn, stable, and all other buildings and improvements thereon, and all cattle, mules, horses, stock, wagons, tools, harness, and agricultural or aratory implements of whatever nature or kind attached thereto, situate, lying and being partly in the parish of West Baton Rouge and partly in the parish of Iberville in this State, on the right bank of the river Mississippi, fronting thereon, & forming the point known as "Point Manchac," opposite Bayou Manchac: Which said tract of land is known as the Australia Plantation, and bounded on the lower side by lands now or formerly belonging to Thompson, and above or on the upper line by lands now or formerly belonging to Valsin
97 Tullier (exclusive of the Bracken tract, containing about ninety acres), containing in all an area of fifteen hundred and 34-100 acres, or seventeen hundred and seventy-four 33-100 arpents.

Which said property was conveyed by said Mrs. Allain unto William Henry Aymar, by two several acts, one thereof passed before Selim Magner, late a notary in this city, on the seventh day of July, eighteen hundred and sixty nine, and the other thereof passed before Joseph Crevellier, a notary in this city, on the ninth day of May, eighteen hundred and seventy-one; and in said act passed before said late Notary Magner, said Aymar assumed the payment of the hereinbefore described promissory note, and of others affecting said property, and also assumed the mortgage securing their payment.

And whereas Charles E. Alter, of this city, has agreed to purchase the said promissory note from said Merrill, upon the condition that he shall be subrogated to all the rights, privileges, and actions of

said Merrill therein and thereto, accruing under and by virtue of the several above mentioned acts of sale, or either of them:

Now, therefore, for and in consideration of the premises, and of the sum of eleven thousand dollars to said Merrill paid in ready current money, at the execution hereof, and in the presence of the undersigned notary and witnesses, by said Alter, the receipt whereof is hereby acknowledged, he, said Amos B. Merrill, moreover declared that he does by these presents transfer, assign, and set over unto the said Charles E. Alter, his heirs and assigns, but without any warranty whatever, the hereinbefore described promissory note, and all his right, title, and interest in and to the same.

And in order to enable the said Charles E. Alter to obtain and receive the amount of said note, together with all interest to accrue thereon, as well as any and all costs, charges, lawyer's fees, and other expenses whatsoever, that are or may become due thereon, under and by virtue of the conditions, stipulations, vendor's privileges, mortgage, reversion, and other terms contained in the afore-recited acts passed before said notaries, Gottschalk and Magner, as aforesaid, said Amos B. Merrill further declared that he moreover transfers, assigns, and sets over unto the said Charles E. Alter, here present and accepting all and singular the rights, interests, privileges, claims, and demands which he has or may have in and to the afore-described promissory note, and especially in and to the mortgage, vendor's privilege, and reversion securing its payment by virtue of the several acts hereinbefore mentioned passed before said notaries, Gottschalk and Magner, and moreover subrogates said Charles E. Alter to the same, and any and all rights, privileges, actions, liens, or mortgages secured by or resulting from the aforesaid acts, with full power and authority to exercise and enforce the same to the same extent that he, said Merrill, might or could do if these presents had not been made; however, with the distinct understanding that this transfer and subrogation is not to impair or prejudice the rights of the third maturing note or of any holders thereof, and that it and said second maturing note hold and shall enjoy as heretofore concurrent rights and privileges in the premises.

And here personally appeared and intervened herein William H. Aymar, of this city, who, after having read what is hereinbefore written, declared and said that the amount of said note (exclusive of interest to its maturity) is still due, owing, and unpaid by him, owing to his inability to meet and discharge the same, and he hereby premises and binds himself to take up and pay the same on the fourteenth day of January, eighteen hundred and seventy-two, (1872.)

And here said Charles E. Alter declared that in consideration of the premises and upon the express conditions that the same is not to be considered as in any manner operating as a novation of said note, nor of the mortgage, vendor's privilege, or reversion securing its payment as aforesaid, he does by these presents postpone or extend the time of payment of said note for the term and period of six months from the date hereof, having been paid all interest up to that date. Said note was paraphed by me, notary, at the execution hereof for identification herewith.

Thus done and passed in my office, at New Orleans, aforesaid, in the presence of George Cenas and Paul A. Conaud, witnesses, both of this

city, who hereunto sign their names with the parties and me, notary, the day and date aforesaid.

(Original signed) AMOS B. MERRILL.
CHAS. E. ALTER.
WILLIAM H. AYMAR.
GEO. CENAS.
P. A. CONAUD.

ANDREW HERO, JR.,
Not. Pub.

A true copy of the original (duly stamped) on record in my office.

102 New Orleans, 14th July, 1871; one word erased as null.

(Signed) ANDREW HERO, JR.,
Not. Pub.

[Seal and 5c. int. rev. stamp.]

Exhibit D.—Filed with Chas. E. Alter's bill; July 11th, 1876.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this day, before me, Selim Magner, a notary public in and for this city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, personally came and appeared Mistress Marguerite D. Allain, wife of Sosthene Allain, of the parish of West Baton Rouge, in this State, herein acting in the absence of her said husband, under the assistance and authorization of Sosthene Allain, jr., the attorney in fact of said Sosthene Allain, (duly appointed by act of procuration executed before Henry Desobry, a notary public in the parish of Iberville, on the twenty-third day of June,
103 1869, and moreover by a supplemental power attached thereto, dated the fifth of July, 1869, who declared that for the consideration, and on the terms and conditions hereinafter set forth, she does by these presents grant, bargain, and sell, with all legal warranties and with subrogation to all her rights and actions in warranty against all preceding vendors or possessors, unto William Henry Aymar, of this city, here present, acknowledging possession and accepting for himself, his heirs and assigns, the undivided half of the hereinafter described tract of land, together with the one undivided half of the buildings and improvements thereon and appurtenances thereof, and all rights, ways, servitudes, privileges, and advantages thereunto belonging, to wit: A certain tract of land or plantation situate, lying, and being partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, on the right bank of the river Mississippi, fronting
104 thereon, and forming the point known as Point Manchac, opposite Bayou Manchac, said tract of land being cultivated as a sugar plantation known as the Australia plantation, bounded on the upper line by lands of Valsin Tullier (exclusive of the Brackin tract containing about ninety acres), containing in all an area of fifteen hundred and one $\frac{34}{100}$ acres (1,501 $\frac{34}{100}$), or seventeen hundred and seventy-four superficial arpents and $\frac{53}{100}$ of an arpent, and being composed of different tracts of land acquired by Sosthene Allain as per plan of said plantation as surveyed by Auguste Wrotnowski in March, 1860, said plan being now in the hands of Felix Grima, a notary public in this city, together with the undivided half of all and singular the brick sugar mill and

slated roof, machinery, dwelling house, out-houses, negro quarters, barns, stables, and other improvements thereon, and of all the
105 cattle, mules, horses, stock, wagons, tools, harness, and agricultural implements, &c., of whatsoever nature or kind, now on said plantation. Which plantation and appurtenances were acquired by said Mistress Marguerite D. Allain by purchase from Amos B. Merrill, of Boston, Massachusetts, per act passed before Edward G. Gottschalk, a notary public in this city, on the third day of July, 1869, the titles to which plantation are detailed and described in the act of purchase of him, said Merrill.

To have and to hold the said presently sold one undivided half of said plantation and appurtenances unto the said purchaser, his heirs and assigns, forever.

The said purchaser does hereby dispense with the production of the certificates of mortgage from the parishes of West Baton Rouge and Iberville, as required by law, and exonerates the undersigned notary from all responsibility in the premises, but the said Mistress Al-
106 lain nevertheless declared that said property stands incumbered in her name by the mortgage she granted in and by her aforerecited act of purchase to secure the payment of three several promissory notes, drawn by her to the order of and endorsed by herself, dated the third of July 1869, each for eleven thousand dollars, payable respectively at one, two, and three years after date, at the Citizen's Bank of Louisiana, in this city, with interest thereon at six per cent. per annum from date until maturity, and eight per cent. thereafter until final payment; said six per cent. interest being payable annually.

This sale is made for and in consideration of the price and sum of thirty-six thousand three hundred and twenty dollars and interest as hereinafter set forth, which has been paid, and is payable, in manner following, to wit, thirty-three hundred and twenty dollars in
107 ready money, paid by said purchaser to the said vendor, the receipt whereof is hereby acknowledged, and acquittance and discharge therefor granted; and the balance of thirty-three thousand dollars and interest in the obligation which the said purchaser takes to put himself in the place and stead of his said vendor, and assume, as he hereby does assume, as well to pay to her acquittance the above-described three several promissory notes, in capital, and all interest accrued and to accrue thereon, as to assume the reversion of the mortgage by which the payment of the same stands secured.

The U. S. internal revenue stamps of thirty-six dollars and fifty cents on this act are hereto attached.

And thereupon the said Mistress Marguerite D. Allain, authorized as aforesaid, furthermore declared that it was her intention not only to ratify said sale but to make renunciation of all rights she has by mort-
108 gage or otherwise on the said property upon which I, notary, declared to her separately and apart from her said husband and out of his presence, as it is my duty, that by the laws of this State she possessed a general mortgage on all the property of her said husband, and upon that of the community in case she should renounce thereto.

First. For the restitution of her dower and the reinvestment of dotal property brought by her in marriage.

Second. For the restitution of dotal property by her acquired during marriage by inheritance, donation or otherwise.

Third. For indemnity against all debts contracted or which she may hereafter contract with her said husband.

Fourth. For such of her paraphernal property and funds as may have been alienated by her said husband, or of which he has had, or may have the administration or enjoyment, or of which he may otherwise have benefited.

Fifth. For nuptial presents made to her by her said husband or others.

That in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against said property whether under mortgage, privilege or otherwise.

Whereupon the said wife declared that she still persisted in the intention she had announced to ratify said act of sale and to dispossess herself of all rights and liens which she has upon said property, whether by marriage contract, dower, donation, or otherwise; and the said husband being now again present before me, and authorizing his said wife, she again declared that she does hereby formally renounce henceforth and forever, all and singular her said rights, and transfer the same to the said purchaser, his heirs and assigns, to be had and held by him and them, and by them enjoyed in law and thereout; and she hereby binds herself and her heirs to the said purchaser, his heirs and assigns, that she and they shall and will at all times acknowledge the validity of *of* the present sale and of the renunciation she now makes of all rights which she has or may have in and to the property herein and hereby sold; and that neither she nor they shall ever seek to oppose or impair the force of this act, hereby renouncing the benefit of all laws, privileges, and customs of which she might avail herself, or which are in her favor in the premises.

Done and passed at New Orleans, the seventh day of July, eighteen hundred and sixty-nine, in presence of James Fahey and Martin L. Ainsworth, witnesses residing in this city, who have signed their names with the said appearers and me, notary, after reading thereof.

(Signed) M. D. ALLAIN.
S. ALLAIN, JR.,
per power of attorney.
WILLIAM H. AYMAR.
JAS. FAHEY.
M. L. AINSWORTH.

S. MAGNER,
Not. Pub.

A true copy.
New Orleans, 9th July, 1869.
(Signed) S. MAGNER,
Not. Pub.

[Seal & 5 cents int. rev. stamp.]

RECORDER'S OFFICE.

STATE OF LOUISIANA,
Parish of West Baton Rouge:

I do hereby certify that the within and foregoing sale has been duly recorded in my office in book of cash sales No. 3, pages 170, 171, 172, & 173, No. 79, July 20th, A. D. 1869. As witness my hand and seal of office, day and date as above.

[SEAL.] (Signed) O. BERNARD,
Recorder.

RECORDER'S OFFICE,
Parish of Iberville, La.

I, the undersigned recorder, do hereby certify that the within and

foregoing act of sale of one-half plantation was this day duly recorded in the office in conveyance book No. 9, entry No. 354.

Witness my hand and seal of office this 26th day of July, A. D. 1869.

(Signed) P. VERRET,
Recorder.

[Seal & 5 c. int. rev. stamp.]

112 I do hereby certify that the same within and foregoing act of sale was this day duly recorded in this office, mortgage book No. 9, entry No. 311.

Witness my hand and seal of office this 7th day of August, A. D. 1869.

(Signed) P. VERRET,
Recorder.

[Seal & 5 c. int. rev. stamp.]

RECORDER'S OFFICE,
West Baton Rouge.

I do hereby certify that the within and foregoing act of sale has been duly recorded in my office this 12th day of August, A D. 1869, in record of mortgages No. 1, folios 92 & 93, entry No. 48.

As witness my hand & seal of office the same day & date as above.

(Signed) O. BERNARD,
Recorder.

Subpœna in chancery to Edward J. Gay.—Issued July 25th, 1876.

UNITED STATES OF AMERICA.

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Edward J. Gay, sub-
113 rogated to the rights of Frank M. Ames, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1876, then and there to answer a bill in chancery in the nature of a bill of intervention filed against him and others, wherein Charles E. Alter, a citizen of the State of Louisiana, is complainant and said Edward J. Gay and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 25th day of July, in the year of our Lord one thousand eight hundred and seventy-six, and the 101 year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter
114 his appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1876, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received July 26th, 1876, by the United States marshal, and on the 29th day of August of same year served a copy of within subpœna in chancery on Edw. J. Gay, named herein, by handing the same to him in person.

New Orleans, Aug. 31, 1876.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery to Mrs. E. F. A. Peniston.—Issued July 25th, 1876.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

115 You are hereby commanded to summon Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America at a circuit court to be holden on the first Monday of September, 1876, then and there to answer a bill in chancery in the nature of a bill of intervention filed against her and others, wherein Charles E. Alter, a citizen of the State of Louisiana, is complainant, and said Mrs. Peniston and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 25th day of July, in the year of our Lord one thousand eight hundred and seventy-six,
116 and the 101st year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that she is required to enter her appearance in the clerk's office of the United States circuit court, on or before the first Monday of September, 1876, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received July 26, 1876, by the U. S. marshal, and on the 4th day of August of same year served a copy of within subpœna in chancery on Mrs. Peniston, named herein, by handing the same to her in person.

New Orleans, August 7th, 1876.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery to Miss Victoria Elizabeth Allain.—Issued July 25th, 1876.

117 UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Miss Victoria Elizabeth Allain, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1876, and then and there to answer a bill in chancery in the nature of a bill of intervention filed against her and others, wherein Charles E. Alter, a citizen of the State of Louisiana, is complainant, and said Miss Allain and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 25th day of
118 July, in the year of our Lord one thousand eight hundred and seventy-six, and the 101st year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
Dy Clerk.

The defendant is hereby notified that she is required to enter her appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1876; otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
Dy Clerk.

Marshal's return.

Received July 26, 1876, by the U. S. marshal, and on the 4th day of August of same year served a copy of within subpœna in chancery on Miss Victoria E. Allain, named herein, by handing the same to her in person.

New Orleans, August 7th, 1876.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
Dy U. S. Marshal.

119 *Subpœna in chancery to Wm. H. Aymar.—Issued July 25th, 1876*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Lousiana, greeting:

You are hereby commanded to summon William Henry Aymar, a subject of the kingdom of England, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1876, then and there to answer a bill in chancery in the nature of a bill of intervention filed against him and others, wherein Charles E. Alter, a citizen of the State of Louisiana, is complainant and said William Henry Aymar and others are defendants.

Herein fail not, and have you then and this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the
120 Supreme Court of the United States of America, this 25th day of July, in the year of our Lord one thousand eight hundred and seventy-six, and the 101st year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1876; otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received July 26, 1876, by the U. S. marshal, and on the 27th day of July, 1876, served a copy of the within subpœna in chancery on the within named Wm. H'y Aymar, by handing the same to him in person in this city.

(Signed) S. B. PACKARD,
U. S. Marshal,
By C. R. STEELE, *Deputy.*

121 *Subpœna in chancery to Andrew K. Brown and Charles Whiting.—Issued July* 25, 1876.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Andrew K. Brown and Charles Whiting, testamentary executors of George F. Miller, citizens of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1876, then and there to answer a bill in chancery in the nature of a bill of intervention filed against them and others, wherein Charles E. Alter, a citizen of the State of Louisiana, is complainant and said testamentary executors and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

122 Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 25th day of July, in the year of our Lord one thousand eight hundred and seventy-six, and the 101st year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1876; otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received July 26, 1876, by the U. S. marshal, and after a diligent search and enquiry Charles Whiting, test'y ex'r named herein, could not be found.

New Orleans, Sept. 4th, 1876.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y U. S. Marshal.

123 *Appearance of E. J. Gay.—Extract from chancery order book, September 27, 1876.*

FRANK M. AMES, EDW. J. GAY, SUBROGATED, *vs.* MARGARET D. ALLAIN AND OTHERS. } 6894.

Edward J. Gay, by his solicitor, David N. Barron, has this day entered his appearance to Chas. E. Alter's bill of complaint in the nature of a bill of intervention filed in this case.

Subpœna in chancery to Andrew K. Brown and Charles Whiting.—Issued October 27th, 1876.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded, as you have heretofore been, to summon Andrew K. Brown and Charles Whiting, testamentary executors
124 of George F. Miller, citizens of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of December, 1876, then and there to answer a bill in chancery in the nature of a bill of intervention filed against them and others, wherein Charles E. Alter, a citizen of the State of Louisiana, is complainant, and said testamentary executors and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 27th day of October, in the year of our Lord one thousand eight hundred and seventy-six, and the 101st year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendants are hereby notified that they are required to
125 enter their appearance in the clerk's office of the United States circuit court, on or before the first Monday of December, 1876, otherwise the bill may be taken pro confesso.

(S'g'd) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received Oct. 27th, 1876, by the U. S. marshal, and on the same day,

month, and year served a copy hereof on Andrew K. Brown, testamentary executor of George F. Miller, by handing the same to him in person in the city of New Orleans.

(Signed) J. R. G. PITKIN,
U. S. Marshal,
By JOHN FAHEY,
Dy Marshal.

OCT. 27, '76.

Appearance of William H. Aymar.—Extract from chancery order book November 17, 1876.

FRANK M. AMES, EDWARD J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN, ET AL. } 6894.

126 William H. Aymar, by his solicitors, Lacey & Butler, has entered his appearance to the bill filed by Charles E. Alter in this case.

Appearance of testamentary executors of George F. Miller to intervention of Chas. E. Alter.—Extract from chancery order book December 4, 1876.

E. J. GAY, SUBROGATED,
vs.
MARY D. ALLAIN, ET ALS. } 6894.

Andrew K. Brown and Charles Whiting, testamentary executors of George F. Miller, have this day, by their solicitors, H. D. Ogden and Charles G. Ogden, entered their appearance to the intevention herein of Charles E. Alter.

Answer of Miller's executor and of Grand Lake Coal Company to intervention of Chas. E. Alter.—Filed January 2d, 1877.

FRANK M. AMES
vs.
MARGARET D. ALLAIN & OTHERS. } No. 6894.

127 Circuit court of the United States, district of Louisiana.

Now, unto this court comes Charles Whiting and Andrew K. Brown, testamentary execut rs of the late George F. Miller, and the Grand Lake Coal Company, a corporation duly established and domiciled in Pittsburgh, Pennsylvania, and for answer to the bill filed against said executors by Charles E. Alter, intervenor herein, avers as follows:

That the said Grand Lake Coal Company were the owners of a certain promissory note, held for their account and benefit by the said G. F. Miller, for the sum of fifteen hundred and seventy-six dollars, dated New Orleans, May 23d, 1874, payable on the first of December following, with interest at the rate of eight per cent. per annum from date until paid, and drawn by H. P. Redmond, to his own order, and by him endorsed.

That to secure the full and punctual payment of said notes at maturity, the said Henry P. Redmond pledged to the said George F. Miller

a certain promissory note for the sum of eleven thousand dollars,
128 made at New Orleans, on the 3d of July, 1869, by Mrs. Margaret D. Allain, duly authorized by her husband, payable one year after date to her own order, and by her endorsed, bearing date , at the rate of six per cent. per annum from date until maturity, and therefrom at the rate of eight per cent. per annum, and secured by mortgage and vendors' lien on a certain sugar plantation situated partly in the parish of West Baton Rouge and partly in the parish of Iberville, as per act passed before E. G. Gottschalk, notary public for the parish of Orleans, on July 3, 1869, a certified copy of which act is annexed to the bill filed herein by said Alter, intervenor, as Exhibit B. The payment of which note was assumed by William H. Aymar, by act before Selim Magner, notary public for the parish of Orleans, on July 7, 1869, a copy of which act is also annexed to said intervenor's bill as Exhibit D.

That said note was, at the time of said pledge, delivered to the said Miller by the said Redmond, and has always since remained in
129 the possession of said Miller, and of his executors, who, as holders thereof, have obtained judgment thereon in the fourth judicial district court for the parish of St. James, in the suit of Geo. F. Miller vs. Wm. H. Aymar; said judgment being for the sum of eleven thousand dollars, with interest at the rate of six per cent. per annum thereon from the 3d of July, 1869, to the 6th of July, 1870, and at the rate of eight per cent. per annum from the 6th of July, 1870, till paid, and five per cent. attorney's fees on said sum, and interest and costs of suit; and to secure the payment of said sum and interest, attorney's fees and costs, a mortgage and vendor's privilege was recognized in favor of the executors of the said Miller, upon the Australia plantation, fully described in the aforesaid acts of July 3, 1869, before E. G. Gottschalk, and July 7, 1869, before S. Magner, copies of which are annexed as aforesaid to intervenor's bill herein, respectively, as Exhibit B and Exhibit D.

And, further answering, respondents aver that the firstly
130 above described note was executed and delivered by the said Henry P. Redmond to the said Miller for a valuable consideration, and the afore-described mortgage note so pledged to secure the payment of said note of Redmond was received and held in pledge by the said Miller in good faith, and they deny that said note so pledged was ever paid in whole or in part, or that it or the mortgage by which it is secured has been cancelled and annulled.

Respondents, further answering, deny that in the aforesaid suits of Geo. F. Miller vs. Wm. H. Aymar, in the fourth judicial district court for the parish of St. James, either the said Miller or his executors fraudulently confederated with the said Aymar in procuring the rendition of the said judgment and the recognition of the mortgage; and they deny that the judgment rendered in said suit is a fraud upon the intervenors herein or upon others who hold mortgages upon the aforesaid property.

131 Respondents further aver that *that* the said mortgage note of Mrs. M. D. Allain having been received in good faith by the late G. F. Miller, from Henry P. Redmond, as a pledge for the punctual payment of said note drawn by the latter, he, the said Redmond, should be summoned to appear and defend the validity of the note so pledged by him and of the mortgage by which it is secured.

The premises considered, respondents pray that it be decreed that the note made by Mrs. M. D. Allain, and by her endorsed, for eleven thousand dollars, dated New Orleans, July 3, 1869, and payable one

year after date, with interest thereon at the rate of six per cent. per annum from date until maturity, and thereafter at the rate of eight per cent. per annum, and the mortgage granted to secure the same, are valid and binding, and that your respondents are entitled to recover out of the proceeds of the property mortgaged to secure said note the amount

132 of the judgment rendered in favor of the executors of the said G. F. Miller by the fourth judicial district court for the parish of St. James, on Dec. 16, 1875, in the suit of George F. Miller vs. William H. Aymar, viz, eleven thousand dollars, with interest at the rate of six per cent. per annum thereon from the 3d of July, 1869, to the 6th of July, 1870, and at the rate of eight per cent. per annum from the 6th of July, 1870, till paid, and five per cent. attorney's fees on said sum and interest, and costs of said suit.

May it please the court to grant to respondents a writ of subpœna directed to Henry P. Redmond, directing him at a certain time and under a certain penalty therein to be named and limited, to personally appear before the honorable court to defend the legality and validity of the aforesaid note pledged by him to the said George F. Miller, and of the mortgage by which it is secured; and further to stand to, perform, and abide such further order, direction, and decree therein as to this honorable court shall agreeable to equity and good conscience.

(Signed) H. D. OGDEN, AND
CHAS. G. OGDEN,
For Respondents

133 Andrew K. Brown, being sworn, deposes that he is one of the executors of the late George F. Miller; that he is also a member of the firm of G. A. Miltenberger & Co., the agents of the Grand Lake Coal Co., and that the facts and allegations in the foregoing answer are true.

(Signed) ANDREW K. BROWN.

Sworn to and subscribed before me, January 2d, '77.

(Signed) F. B. VINOT,
U. S. Comm'r.

Extract from chancery order book, January 2d, 1877.

FRANK M. AMES
vs. } 6894.
MARGARET D. ALLAIN AND OTHERS.

Charles Whiting and Andrew K. Brown, testamentary executors of the late Geo. F. Miller, and the Grand Lake Coal Company have this day filed their answer to the bill filed against the said executors by Charles E. Alter, intervenor herein.

134 *Subpœna in chancery to H. P. Raymond.—Issued January 2d*, 1877.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summons Henry P. Redmond to appear before the honorable the judges of fifth judicial circuit of the United States of America, at a circuit court to be holden on the first

Monday of February, 1877, then and there to answer a bill in chancery filed against Charles Whiting and Andrew K. Brown, testamentary executors of the late George F. Miller, wherein Charles E. Alter is complainant and intervenor, and said executors defendants, and to the answer of the said executors and the Grand Lake Coal Company thereon.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

135 Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 2d day of January, in the year of our Lord one thousand eight hundred and seventy-seven, and the 101st year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit on or before the first Monday of February, 1877; otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received January 17, 1877, by the U. S. marshal, and returned not found.

(Signed) J. B. STOCKTON,
D'y U. S. M'l.

Answer of Wm. H. Aymar to bill of Chas. E. Alter.—Filed January 9th, 1877.

136 Before the United States circuit court for the district of Louisiana.

FRANK M. AMES, EDWARD J. GAY, SUBROgated,
vs.
MARGARET D. ALLAIN, WIFE OF SOSTHENE Allain, et al. } No. 6894.

And now before the court comes William H. Aymar, and for answer to the bill of complaint, in the nature of a bill of intervention, of Charles E. Alter, herein filed, denies all and singular the several articles, averments, and allegations of said bill that it may be for the interest of this respondent to deny.

Further answering, this respondent specially denies that the note payable at one year, referred to in article 5 of said bill, was ever paid, cancelled, or annulled by this respondent, either as alleged in said bill or otherwise.

137 Further answering, respondent denies each and every material averment and allegation in the 7th article of said bill contained, and more especially does this respondent particularly deny the payment, cancellation, and amendment of the note referred to in said article, and the partial cancellation of the mortgage given to secure said note. And further, denies that he ever wrongfully or otherwise delivered said note to George F. Miller, or to any one; said note and mortgage never having been in respondent's possession, or under his control or ownership, since the same were executed. Further, denies that he

purposely made no defence to the suit instituted by said Miller on said note and mortgage.

Further answering, respondent specially denies that there was any fraudulent confederation between respondent and said Miller in connection with the rendition of said judgment, as charged in article 8 of said bill, or otherwise, but on the contrary, this respondent avers and says that said suit was instituted and said judgment rendered only after respondent had done all in his power to prevent the com-
138 mencement of said suit and the rendition of said judgment.

Further answering, respondent specially and particularly de-denies that Henry P. Redmond and Frederick Eastman, or either of them, purchased from Frank M. Ames for this respondent the note or judgment referred to in article 10 of said intervention of Charles E. Alter herein.

Further answering, respondent says that the property described in the bill of complaint of Charles E. Alter, in the nature of a bill of intervention herein, is the property of this respondent; that the same has been unlawfully sold, having been advertised and offered for sale and adjudicated in block, and not in lots of not less than ten nor more than fifty acres, all of which is and was in violation of article 132 of the constitution of the State of Louisiana of 1868, and the laws of said State enacted thereunder; and that said advertisement, adjudication and sale of said property, being in violation of a prohibitory law, are absolutely null and void.

139 Wherefore this respondent prays that all the claims and demands set forth in said bill of complaint of Charles E. Alter be rejected; that the adjudication and sale of the property described in said bill be held and decreed to have been wrongfully made, and the title to said property by virtue thereof be declared absolutely null and void. Respondent further prays for judgment in his favor, with all proper costs, and for such further order and relief as may be suited to law and the nature of this case.

(Signed) LACEY & BUTLER,
Solicitors.

STATE OF LOUISIANA,
City of New Orleans:

On the 8th day of January, 1877, before me personally appeared William H. Aymar, one of the defendants to the bill of complaint in the nature of a bill of intervention of Charles E. Alter herein, and made oath that he has read the foregoing answer, and that all the averments and defences contained therein are true, to the best of deponent's knowledge, information, and belief.

(S'g'd) WILLIAM H. AYMAR.

Sworn to & subscribed before me this 8th day of January, 1877.

(Signed) F. B. VINOT,
U. S. Com'r.

140 *Extract from chancery order book, January 9th, 1877.*

FRANK M. AMES, EDWARD J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN ET AL. } 6894.

The defendant, Wm. H. Aymar, has this day filed his answer to the bill of complaint of Chas. E. Alter.

Demurrer of Charles E. Alter to a part of the answer of Wm. H. Aymar.—Filed Jan'y 24, 1877.

Circuit court of the United States for the fifth circuit and district of Louisiana. In equity.

FRANK M. AMES, EDWARD J. GAY, SUBROgated,
vs.
MARGARET D. ALLAIN, WIFE OF SOSTHENE Allain, et al. } No. 6894.

Demurrer of Chas. E. Alter to the answer of William H. Aymar.

The complainant, Chas. E. Alter, to that part of the answer of William H. Ayman, which is as follows: "Further answering, this respondent
141 says that the property described in the bill of complaint of Charles E. Alter, in the nature of a bill of intervention herein, is the property of this respondent; that the same has been wrongfully sold, having been advertised and offered for sale and adjudicated in block, and not in lots of not less than 10 nor more than 50 acres, all of which is and was in violation of Article 132 of the constitut on of the State of Louisiana of 1868, and the laws of said State enacted thereunder, and that said advertisements, adjudication, and sale of said property, being in violation of a prohibitory law, are absolutely null and void;" say, there is good cause of demurrer thereunto, and he does demur thereto, and for causes of demurrer say, that so much of said answer, in case the same were true, contains no matter of equity whereon this court can ground any decree or give the said Aymar any relief as against this complainant.

Wherefore, and for divers other errors in said answer con-
142 tained and appearing on the face thereof, this complainant do' demur to the said answer and humbly crave the judgment of this hon. court, whether they are compellable or ought to make any answer thereunto otherwise than as aforesaid.

And complainant humbly prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

(Signed) GEO. L. BRIGHT,
Solicitor.

Extract from chancery order book, January 24, 1877.

FRANK M. AMES, ED. J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN ET AL. } 6894.

Charles E. Alter, by his solicitor, Geo. L. Bright, has this day filed his demurrer to a part of the answer of Wm. H. Aymar.

Replication of Chas. E. Alter to answer of Charles Whiting and Andrew K. Brown, executors.—Filed January 24, 1877.

143 Circuit court of the United States, dist. of La. In equity.

FRANK M. AMES, ED. J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN AND OTHERS. } No. 6984.

Replication of Chas. E. Alter to the answer of Charles Whiting and Andrew K. Brown, testamentary executors of the late George F. Miller and the Grand Lake Coal Company.

The repliant, saving and reserving to himself all and all manner of

advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto, saith that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in the
144 law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, materially or effectually in law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain and prove, as this honorable court shall direct; and humbly prays as in and by his said bill he hath already prayed.

Jan'y 19, 1876.

(Signed) GEO. L. BRIGHT,
Solicitor for the Plaintiff.

Replication of Alter to part of Aymar's answer.—Filed January 24, 1877.

FRANK M. AMES, ED. J. GAY, SUBROGATED.
vs.
MARGARET D. ALLAIN, WIFE OF SOSTHENE Allain, and others. } No. 6894

Before the circuit court of the United States for the 5th circuit and district of Louisiana.

145 General replication of Charles E. Alter to that part of the answer of Wm. H. Aymar to which he has not demurred:

Charles E. Alter, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, Wm. H. Aymar, for replication thereunto, that is, to so much of said answer not demurred to, says that he does and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, Aymar, and that the answer of said Aymar is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without that, that any other matter or thing in said answer contained materially or effectually in the law to be replied unto, and not herein and hereby well and sufficiently re-
146 plied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays as in and by his said bill he has already prayed.

Jan.,'77.

(Signed) GEO. L. BRIGHT,
Solicitor.

Replication of Chas. E. Alter to answer of Ed. J. Gay.—Filed January 24, 1877.

Before the U. S. circuit court for the 5th circuit and district of La. In equity.

FRANK M. AMES, ED. J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN. } No. 6894.

The replication of Chas. E. Alter to the answer of Edward J. Gay.

This repliant, saving and reserving to himself all and all man-

ner of advantage of exceptions which may be had and taken
147 to the man fold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto saith, that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied to by this repliant; without that, that any other matter or thing in the said answer contained, materially or effectually in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays as in and by his said bill he had already prayed.

(Signed) GEO. L. BRIGHT,
Solicitor.

148 *Extract from chancery order book, January* 24, 1877.

FRANK M. AMES, ED. J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN AND OTHERS. } 6894.

Charles E. Alter, by his solicitor, Geo. L. Bright, has this day filed his separate replication to the answer of Edw. J. Gay to the answer of Charles Whiting and Andrew K. Brown, testamentary executors of the late George F. Miller, and the Grand Lake Coal Company, and part of the answer of Wm. H. Aymar.

Answer of Edward J. Gay to bill of Chas. E. Alter.—Filed January 25, 1877.

United States circuit court, district of Louisiana.

EDWARD J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN & OTHERS. }

The answer of Edward J. Gay, defendant, to the bill of com-
149 plaint of Charles E. Alter, in the nature of a bill of intervention.

This defendant, now and at all times hereafter, reserving all manner of benefit and advantage to himself of exceptions to the many errors and insufficiencies in said bill contained, for answer thereto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says:

I. He admits that on the 24 May, 1873, Frank M. Ames did obtain a judgment as detailed and set forth in complainant's bill.

II. He admits that said Ames transferred said judgment to respondent, and that an execution issued and the property was seized and advertised for sale, and he avers that the marshal under said writ of execution proceeded to sell said property, fully described in said judgment, to *to* the highest and last bidder therefor, and on thes econd day of September, 1876, same was sold to Charles E. Alter, the complain-
150 ant, for the sum of dollars cash, and under the order granted on said complainant's bill, said sum should now be in the hands of the said marshal, and same should be applied to the pay-

ment of the mortgage claims against said property, as hereinafter fully set forth and claimed.

III. Your respondent admits that said judgment was rendered upon the note, as described in said Art. III of said bill.

IV. Your respondent admits that Mrs. Allain secured the notes, as detailed in Art. IV of said bill, and that said notes at that time were concurrent, and that said act was duly recorded, as set forth in said bill. That said note, payable at one year, was, after its maturity, paid, cancelled, and annulled by Wm. H. Aymar, as set forth in said bill, and as respondent verily believes that the note payable at three years is the one on which said Frank M. Ames obtained the judgment aforesaid: that the note payable two years after date was by an act before Andrew Hero, jr., dated
151 14th July, 1871, transferred to the complainant, but your respondent verily believes the truth to be that said transfer was made under the following purposes and circumstances: That at the time the complainant, Ch's E. Alter, was a large creditor of William H. Aymar, one of the defendants in this case, holding other mortgage securities of said William H. Aymar; that said Aymar, who had in the acts between himself and Mrs. Margaret D. Allain, assumed to pay all three of these note secured by mortgage on the property described in said bill as averred and set forth in said bill, to conceal the fact of payment of said note procured said complainant, Charles E. Alter, to appear in said transfer and to accept same, but said William H. Aymar furnished the money with which said note was purchased, and which, as set forth, was the full amount of same, in principal and interest, and said transaction was in truth and in fact a payment of said note by said
152 debtor, Aymar, and thus said note was extinguished, and ceased to exist; that said complainant never gave said Aymar or Amos B. Merrill any valuable consideration for same, but same was by said Aymar left in the hands of said complainant, and whatever amount may be realized from the property sold as aforesaid is to enure to the benefit of *of* said Aymar by his liabilities to said Alter in other transactions, which this respondent avers is illegal and inequitable; that said Aymar was the party bound for the payment of said note.

VI. Your respondent admits that said complainant did, as set forth, obtain a judgment against the representatives of Mrs. Margaret D. Allain, but your respondent avers that said judgment was obtained by default, and without any appearance or answer, and at the time same was obtained the said parties were, as your orator verily believes, ignorant of the true state of the facts as above set forth, and said
153 judgment can have no legal or binding force against this respondent, but said judgment is a fraud against him and said representatives of Mrs. Allain.

VII. Your respondent admits that said Aymar did assume the payment of the note transferred to complainant as set forth, and he avers he also assumed by the same act the note held by said Ames, and on which said judgment was rendered. And by an act passed before Joseph Cuvillier, a notary public for New Orleans, on the ninth day of May, eighteen hundred and seventy-one, said William H. Aymar bound himself to cause to be erased from the books of the recorders of mortgages both for the parish of West Baton Rouge and Iberville the mortgage resulting from the three notes aforesaid, and amounting in principal to the sum of thirty-three thousand dollars, as follows: To the extent of eleven thousand dollars more by the first day of July, 1874, and

ner of advantage of exceptions which may be had and taken
147 to the man fold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto saith, that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied to by this repliant; without that, that any other matter or thing in the said answer contained, materially or effectually in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays as in and by his said bill he had already prayed.

(Signed) GEO. L. BRIGHT,
Solicitor.

148 *Extract from chancery order book, January* 24, 1877.

FRANK M. AMES, ED. J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN AND OTHERS. } 6894.

Charles E. Alter, by his solicitor, Geo. L. Bright, has this day filed his separate replication to the answer of Edw. J. Gay to the answer of Charles Whiting and Andrew K. Brown, testamentary executors of the late George F. Miller, and the Grand Lake Coal Company, and part of the answer of Wm. H. Aymar.

Answer of Edward J. Gay to bill of Chas. E. Alter.—Filed January 25, 1877.

United States circuit court, district of Louisiana.

EDWARD J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN & OTHERS.

The answer of Edward J. Gay, defendant, to the bill of com-
149 plaint of Charles E. Alter, in the nature of a bill of intervention.

This defendant, now and at all times hereafter, reserving all manner of benefit and advantage to himself of exceptions to the many errors and insufficiencies in said bill contained, for answer thereto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says:

I. He admits that on the 24 May, 1873, Frank M. Ames did obtain a judgment as detailed and set forth in complainant's bill.

II. He admits that said Ames transferred said judgment to respondent, and that an execution issued and the property was seized and advertised for sale, and he avers that the marshal under said writ of execution proceeded to sell said property, fully described in said judgment, to *to* the highest and last bidder therefor, and on thes econd day of September, 1876, same was sold to Charles E. Alter, the complain-
150 ant, for the sum of dollars cash, and under the order granted on said complainant's bill, said sum should now be in the hands of the said marshal, and same should be applied to the pay-

ment of the mortgage claims against said property, as hereinafter fully set forth and claimed.

III. Your respondent admits that said judgment was rendered upon the note, as described in said Art. III of said bill.

IV. Your respondent admits that Mrs. Allain secured the notes, as detailed in Art. IV of said bill, and that said notes at that time were concurrent, and that said act was duly recorded, as set forth in said bill. That said note, payable at one year, was, after its maturity, paid, cancelled, and annulled by Wm. H. Aymar, as set forth in said bill, and as respondent verily believes that the note payable at three years is the one on which said Frank M. Ames obtained the judgment aforesaid: that the note payable two years after date was by an act before Andrew Hero, jr., dated
151 14th July, 1871, transferred to the complainant, but your respondent verily believes the truth to be that said transfer was made under the following purposes and circumstances: That at the time the complainant, Ch's E. Alter, was a large creditor of William H. Aymar, one of the defendants in this case, holding other mortgage securities of said William H. Aymar; that said Aymar, who had in the acts between himself and Mrs. Margaret D. Allain, assumed to pay all three of these note secured by mortgage on the property described in said bill as averred and set forth in said bill, to conceal the fact of payment of said note procured said complainant, Charles E. Alter, to appear in said transfer and to accept same, but said William H. Aymar furnished the money with which said note was purchased, and which, as set forth, was the full amount of same, in principal and interest, and said transaction was in truth and in fact a payment of said note by said
152 debtor, Aymar, and thus said note was extinguished, and ceased to exist; that said complainant never gave said Aymar or Amos B. Merrill any valuable consideration for same, but same was by said Aymar left in the hands of said complainant, and whatever amount may be realized from the property sold as aforesaid is to enure to the benefit of *of* said Aymar by his liabilities to said Alter in other transactions, which this respondent avers is illegal and inequitable; that said Aymar was the party bound for the payment of said note.

VI. Your respondent admits that said complainant did, as set forth, obtain a judgment against the representatives of Mrs. Margaret D. Allain, but your respondent avers that said judgment was obtained by default, and without any appearance or answer, and at the time same was obtained the said parties were, as your orator verily believes, ignorant of the true state of the facts as above set forth, and said
153 judgment can have no legal or binding force against this respondent, but said judgment is a fraud against him and said representatives of Mrs. Allain.

VII. Your respondent admits that said Aymar did assume the payment of the note transferred to complainant as set forth, and he avers he also assumed by the same act the note held by said Ames, and on which said judgment was rendered. And by an act passed before Joseph Cuvillier, a notary public for New Orleans, on the ninth day of May, eighteen hundred and seventy-one, said William H. Aymar bound himself to cause to be erased from the books of the recorders of mortgages both for the parish of West Baton Rouge and Iberville the mortgage resulting from the three notes aforesaid, and amounting in principal to the sum of thirty-three thousand dollars, as follows: To the extent of eleven thousand dollars more by the first day of July, 1874, and

154 to free entirely the said plantation from the effects of said mortgage by the first day of July, 1875.

Your respondent admits and avers he is informed and verily believes the truth of the averments of complainant's bill, so far as same set up the payment of Aymar of the first note, and he admits that a judgment was wrongfully obtained on same in the parish of St. James, as charged in said bill; and he avers that said George F. Miller and William H. Aymar fraudulently confederated together in procuring the rendition of said judgment, and the recognition of the mortgage.

IX. That this respondent knows nothing of the death of George F. Miller, or of the appointment of executors.

X. Your respondent avers that he is ignorant of all transactions which may have occurred previous to his becoming the owner of the judgment of Frank M. Ames vs. Mrs. Margaret D. Allain & als, as set forth, but he is informed and verily believes that it is not true
155 that any sale of said judgment was ever made by said Ames to Henry P. Redman and Frederick Eastman, purchasing for William H. Aymar, as charged in said bill, and said allegation is specially and particularly denied.

XI. Your respondent specially denies that he had the knowledge of the pretended sale as aforesaid, at the date of the transfer, but admits that he was informed that some transactions had taken place relative to said note between said Ames and parties other than those set forth in the bill, but said negotiations never resulted in any complete agreement, said parties being unwilling to carry out their proposition. That no sale of said judgment was made to any one prior to the sale and transfer to your respondent, and said judgment, interest, and costs are due this respondent, as claimed in said execution, and same should be paid over to him in full by said marshal.

156 And this defendant denies all unlawful combination in bill charged, without admitting that any other matter or thing material for them to make answer to, and not herein sufficiently answered, avoided or denied, is true, to the knowledge or belief of this defendant.

And which matters and things this defendant is ready to aver and prove as this court shall direct, and pray to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) EDWARD J. GAY.
" DAVID N. BARROW,
Solicitor for Defendants.

Edward J. Gay, being duly sworn, says the foregoing answer has been read and signed by him; that same is true and correct so far as it sets forth facts within his knowledge, and those stated on information he believes to be true.

(Signed) EDWARD J. GAY.

Sworn to and subscribed before me this 25th day of January, 1877.

(Signed) F. B. VINOT,
U. S. Comm'r.

157 *Extract from chancery order-book, January* 25, 1877.

FRANK M. AMES, EDWARD J. GAY, SUBROGATED, *vs.* MARGARET D. ALLAIN ET AL. } 6894.

Edward J. Gay, by his solicitor, David N. Barrow, has this day filed

his answer to the bill of complaint of Charles E. Alter, in the nature of a bill of intervention.

Answer of Mrs. Peniston and Miss Allain.—Filed April 12, 1877.

United States circuit court. In equity.

EDWARD J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN AND OTHERS. } No. 6894.

The answer of Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, and of her husband, to aid and assist her, and of Miss
158 Victoria Elizabeth Allain, to the bill of complaint of Chas. E. Alter, in the nature of a bill of intervention.

They admit and adopt as theirs the allegations made in the first, second, third, fourth, and fifth, sixth, seventh, eighth, ninth, tenth, eleventh articles of the bill of complaint.

For further answer they say they are the holders and owners of one note for the sum of $27,000 *dollars*, payable 13 years after date.

And eleven (11) other notes, each for $2,160 each, being for the yearly interest on said sum of $27,000, the said interest notes being made payable respectively at 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 years from their dates, all of which eleven notes bearing eight per cent. interest per annum from maturity until paid, all made by William H. Aymar, dated March 1st, 1871.

Your petitioners show that said notes are secured by vendor's lien and special mortgage on the Australian plantation sold by the
159 sheriff, the proceeds of which are to be distributed, and the lien and mortgage is next to those held by Edward J. Gay, subrogated, &c., and Ch's E. Alter.

That said lien and mortgage exists by virtue of the act of sale made by Mrs. Sosthene Allain, to William H. Aymar, on 9th May, 1871, a copy of which is hereto annexed and made a part of this answer.

That the claim of Edward J. Gay, subrogated, should be reduced to $500; and after paying said amount, and the claim of Charles E. Alter, for the sum of $11,000 (eleven thousand dollars) with interest at the rate of 8% per annum from 14th January, 1872, until paid, and five per cent. attorneys' fees, on principal and interest and costs, the balance should be paid to your respondents.

Wherefore your respondents pray that it be decreed that the claim of Edward J. Gay is good for $5,000 and no more; and after paying that amount to him, and $11,000 (eleven thousand dollars), with inter-
160 est at *at* therate of 8% per annum from 14th January, 1872, until paid, and five per cent. attorneys' fees on principal and interest and costs to Charles E. Alter, that the balance be paid to your respondents.

And respondents pray for general relief.

(Signed) GEO. L. BRIGHT,
Counsel for Respondents.

Mrs. E. Felicie Allain Peniston and Miss Victoria Elizabeth Allain, sworn, says that the foregoing answer has been read and signed by her; that the same is true and correct so far as it sets forth facts within

her knowledge; and those stated on information they believe to be true.

(Signed) E. F. PENISTON.
" V. ALLAIN.

Sworn to and subscribed before me this 12th April, 1877.
(Signed) F. B. VINOT,
U. S. Comm'r.

161 *Copy of act of sale referred to in foregoing answer.*

STATE OF LOUISIANA:

Before me, Joseph Cuvillier, a notary public for the parish of Orleans and the city of New Orleans, therein residing, personally appeared Mrs. Margaret Dilia Kennedy, wife of Mr. Sosthene Allain, with whom she resides in the parish of West Baton Rouge, in this State, the said Mrs. Allain herein acting by virtue of an authorization to her given by her said husband by act passed on the twenty-seventh of April last (1871), before Austin Hunt, a notary public in and for the parish of Iberville, a duly certified copy of which is hereto annexed.

And the said Mrs. Allain, authorized as aforesaid, declared that she does by these presents sell, with all legal warranty and with subrogation to her rights and actions in warranty against all preceding vendors and other warrantors, unto Mr. William Henry Aymar, of this
162 city, here present and accepting, the undivided half of that certain tract of land or plantation, situate lying and being partly in the parish of West Baton Rouge and partly in the said parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon, and forming the point known as Point Manchac, said tract of land being cultivated as a sugar plantation, known as the Australia plantation, bounded on the upper line by lands of Valsin Tullier (exclusive of Brackin tract, containing about ninety acres), containing in all an area of fifteen hundred and $\frac{43}{100}$ acres, or seventeen hundred and seventy-four superficial arpents and fifty-three hundredths of an arpent, and being composed of different tracts of land acquired by Sosthene Allain, as per plan of said plantation as surveyed by Auguste Wrotnowski in March, eighteen hundred and sixty, said plan being now in the hands of Felix Grima, a notary public in the parish of Orleans, together with the
163 undivided half of all and singular the brick sugar house with slated roof, machinery, dwelling house, out houses, negro quarters, barns, stables, and other improvements thereon, and all the cattle, mules, horses, stock, wagons, tools, harness and agricultural implements, of whatsoever nature or kind, on said plantation, which is the same acquired by the said Mrs. Allain, by purchase, from Amos B. Merrill, of Boston, Massachusetts, by act before E. G. Gottschalk, a notary public of this city, on the third of July, eighteen hundred and sixty-nine.

This sale is made for and in consideration of the price and sum of forty-two thousand dollars, payable, fifteen thousand dollars cash, and twenty-seven thousand dollars in thirteen years, with eight per cent. per annum interest from the first of March last (1871), payable annually. In compliance with the above terms and conditions, the said Aymar has paid fifteen thousand dollars cash to the said Mrs. Allain, who acknowledges the receipt thereof and grants acquittance therefor; and
164 for the balance, twenty-seven thousand dollars, with the interest thereon payable annually, the said Aymar has furnished the sev-

eral promissory notes hereinafter described, subscribed by him to his order, and by him endorsed, dated March first, eighteen hundred and seventy-one: one note for the said sum of twenty-seven thousand dollars, payable thirteen years after date, and thirteen other notes, each for two thousand one hundred and sixty dollars each (being for the yearly interest on the said sum of twenty-seven thousand dollars); the said interest-notes being made payable respectively at one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, & thirteen years from their date; all of which fourteen notes, bearing eight per cent. interest per annum, from maturity until paid, are made payable at the domicil at the Bank of America, in this city; and the said notes were handed over to the said Mrs. Allain, who acknowledges the receipt thereof, after having been paraphed ne varietur by the notary undersigned, for
165 identity herewith; and in case it shall become necessary to institute legal proceedings for the recovery of the amount of said notes, or any part thereof, the said Aymar binds himself to pay the fees of the attorney at law employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for.

Now, therefore, in order to secure the punctual payment of the said notes at maturity, together with the interest and attorney's fees, the said Mrs. Allain, authorized as aforesaid, reserves her privilege as vendor, and the said Aymar declared that he does, by these presents, mortgage, affect and specially hypothecate in favor of said Mrs. Allain and to enure to the use and benefit of any and all future holder or holders of the said notes, the said Mrs. Allain here accepting for herself or others, not only the undivided half of the Australia plantation, purchased by these presents, but also the other half of the same plantation, which the said Aymar had purchased from the present vendor, by act dated July seventh, eighteen hundred and sixty-nine, before
166 Selim Magner, then a notary public of this city, which entire plantation the said Aymar binds himself not to alienate or encumber to the prejudice of this act.

It is hereby agreed between the parties that Mrs. Allain shall have the right to occupy with her family, during the space of three years, to be computed from the first of March last (1871), the main dwelling-house on said plantation, and its appurtenances, as well as a sufficient number of negro cabins as may become necessary to lodge her servants and those of her family; but in case the said Aymar should hereafter sell the whole of the above-described plantation before the expiration of the said three years, and after the execution of his purchaser's title deeds, should the latter require from Mrs. Allain the possession of said main dwelling house, its appurtenances and the negro cabins above mentioned, she, the said Mrs. Allain, shall vacate the premises,
167 but only after the expiration of three months to be computed from the day she shall have been notified in writing of the intention of Mr. Aymar's purchaser to have the possession of the property, the use of which is hereby reserved to Mrs. Allain. During the space of three years, above referred to, neither Mrs. Allain nor Mr. Aymar bound to make any repairs to the dwelling house and negro cabins, above referred to, nor shall Mrs. Allain be required to give any security for the use, by herself and family, of the said dwelling-house and negro cabin.

By the hereunto annexed certificate from the recorder of mortgages for the said parish of Iberville, under date of April eighteenth, eighteen hundred and seventy-one, it appears that there is no other incumbrance standing in the name of the said Mrs. Allain and recorded against the plantation above described than a special mortgage in favor of Mr. Amos

B. Merrill to secure the payment of thirty-three thousand dollars, with interest, which mortgage the said Aymar has assumed by his
168 act of purchase the other undivided half, passed on the seventh of July, eighteen hundred and sixty-nine, before Selim Magner, then a notary public of this city.

Mr. Aymar binds himself to cause to be erased from the books of the recorder of mortgages both for the parish of West Baton Rouge and Iberville the above mortgage of thirty-three thousand dollars, as follows:

To the extent of eleven thousand dollars by the first day of July, eighteen hundred and seventy-three.

To the extent of eleven thousand dollars more by the first day of July, eighteen hundred and seventy-four.

And to free entirely the said plantation from the effects of said mortgage by the first day of July, eighteen hundred and seventy-five.

It is agreed by and between the parties hereto that in case the said Aymar should fail by the first day of July, eighteen hundred and seventy-five, to free the said plantation from the effects of the said
169 mortgage of thirty-three thousand dollars, then the said Mrs. Allain shall have the right to enforce not only the payment of each of the interest notes above referred to as may be then due, but also the interest note falling due in the year eighteen hundred and seventy-six, and the note of twenty seven thousand dollars which shall become due and demandable by the fact of the failure on the part of the said Aymar to free the above plantation of the mortgage of thirty-three thousand dollars as hereinabove contemplated.

It is also hereby agreed by and between the parties that Mrs. Allain shall have the right to require and to compel Mr. Aymar to pay, by anticipation, and after thirty days' notice, any of the interest coupon notes above referred to, provided the said Aymar be not required to pay by anticipation more than one interest coupon note in the same year.

All the taxes which are or may be now, or may hereafter become due on the said plantation, the said Aymar binds himself to pay.

170 According to the certificate of the recorder of mortgages for the parish of West Baton Rouge, also annexed to these presents, it appears that besides the mortgage for thirty-three thousand dollars above referred to, the undivided half of said plantation sold by these presents is subject to a judicial mortgage for sixty seven dollars and fifty cents, with interest and costs in favor of J. V. Duvalde, which mortgage the said Mrs. Allain binds herself to have raised & cancelled in the shortest possible delay, which is accepted by the purchaser. Thus done and passed in my office, on this ninth day of May, eighteen hundred and seventy-one, in presence of Theodule Buisson and George Gumault, competent witnesses residing in this city, who have signed these presents, together with the parties, and me, notary, after a due reading of the whole.

At the moment of signing the foregoing act, the parties agree and covenant that, should Mr. Aymar, before the expiration of the
171 four years contemplated for the entire erasure of thirty-three thousand dollars, sell or convey the Australia plantation, or any portion thereof, he will then be bounded to cause to be erased immediately the above mortgage of thirty-three thousand dollars to the extent of the

amount of such of the notes representing the said mortgage claim of thirty-three thousand dollars as will then be due and eligible.

(Original signed.)

M. D. ALLAIN.
WILLIAM H. AYMAR.
GEO. GUMAULT.
TH. BUISSON.

JOSEPH CUVILLIER,
Not. Pub.

A true copy of the original.

[SEAL.] (Signed) JOSEPH CUVILLIER,
Not. Pub.

[5-cent int. rev. stamp, cancelled.]

RECORDER'S OFFICE,
Parish of Iberville, La.

I, the undersigned recorder, do hereby certify that the within & foregoing act of sale of property was this day duly recorded in this office in mortgages book No. 10, entry No. 377, in conveyances book No. 10, entry No. 334.

Witness my hand & seal of office this 16th* May, A. D. 1871.

[SEAL.] (Signed) P. VERRET,
Recorder.

[5 cent I. rev. stamp, cancelled.]

*The sixteen valid.

(Signed) P. VERRET,
Recorder.

172

RECORDER'S OFFICE,
Parish of West Baton Rouge, La.

I do hereby certify that the within and foregoing act of sale has been duly recorded in my office May the 19th, A. D. 1871, in record of mortgages No. 1, folios 557, 558, 559, and 560, entry No. 416, and in book of conveyances No. 3, folios 463, 464, 465, & 466, entry No. 251.

As witness my hand and seal of office the same day and date as above.

(Signed) O. BERNARD,
Recorder.

Extract from chancery order book, April 12, 1877.

EDWARD J. GAY, SUBROGATED, *vs.* MARGARET D. ALLAIN ET ALS. } 6894.

Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, and Mrs. Victoria Elizabeth Allain, defendants to the bill of complaint of Charles E. Alter in the nature of a bill of intervention, have this day, by
173 their solicitor, Geo. L. Bright, filed their answer to the said bill.

Motion for rule to pay funds to E. J. Gay.—Entered and filed May 28, 1877.

United States circuit court, district of Louisiana. In equity.

FRANK M. AMES, EDWARD J. GAY, SUBROGATED, *vs.* MARGARET D. ALLAIN AND OTHERS, CHARLES E. Alter, intervenor. } 6894.

On motion of David N. Barron, solicitor for Edward J. Gay, and on

ANDREW K. BROWN, being duly sworn, deposes that he is one
180 of the testamentary executors of the late George F. Miller, and a member of the firm of C. A. Miltenberger and Co., the agents in Louisiana of the Grand Lake Coal Company of Pittsburgh, Pennsylvania; that the testimony of Henry P. Redmond, of Galveston, Texas, is material and necessary to the trial of this cause on behalf of said executors and said Grand Lake Coal Company, and that it is necessary that a commission issue to take the same.

(Signed) ANDREW K. BROWN.

Sworn to and subscribed before me this 16th day of October, 1877.

(S'g'd) F. B. VINOT,
U. S. Comm'r.

Cross-interrogatories to Henry P. Redmond.

FRANK M. AMES, EDWARD J. GAY, SUBROgated,
vs.
MARGARET D. ALLAIN, CHARLES E. ALTER, intervenor. } 6894.

Cross-interrogatories to Henry P. Redmond, witness for executors of Geo. F. Miller:

181 Were you ever indebted to George F. Miller? If yea, when, and for what consideration? If you should say you gave Geo. F. Miller your note, state what Geo. F. Miller gave you for the note. Is it not true that Aymar was indebted to Geo. F. Miller? Is it not true that at the request of Aymar, and to serve his purposes, you gave Miller your note? Did not Aymar give you, or did you not receive from him, a mortgage note past due, made by Mrs. M. D. Allain, and did you not deliver it to Geo. F. Miller for himself, or for some coal company for which he was acting? If you should say it is not true, then state how near true it is, and state fully the circumstances of the transaction?

2. Are you acquainted with Frederick Eastman? Was he ever in the employment of Aymar? Is it not true that Aymar used him for the purpose of covering his transactions and to protect himself from his creditors? State fully all you know relative thereto. Do you
182 know of any transaction wherein Aymar thus used Frederick Eastman? Have you stated fully all you know relative thereto?

3. Were you ever in the employment of Aymar? If yea, when, and in what capacity? Is it not true that Aymar used your name with your consent, for the purpose of covering his transactions, and to protect himself from his creditors? Did he not so use you and your name in a transaction with Dr. W. N. Mercer, and in one with Geo. F. Miller?

4. Was not the note for $11,000 made by Mrs. M. D. Allain, dated July 3d, 1869, payable one year after date, the property of Wm. H. Aymar? Is it not the same note that he pledged to Dr. W. N. Mercer, and was filed in the suit of W. N. Mercer vs. F. Eastman and others, No. 4383, of the 6th district court of New Orleans? Did not Aymar subsequently deliver that note to you, and cause you to make your note to Geo. F. Miller, and deliver the $11,000 note to Miller as a col-
183 lateral security? If nay, state how you became possessed of the note for $11,000.

5. Is it not true that Aymar paid or settled the claim and suit of Dr. W. N. Mercer, and caused said Mercer to subrogate you to his rights? Is it not true that you really had no interest in the subrogation, but was only permitting your name to be used by Aymar for his purposes? Did not Aymar's counsel make the arrangement—prepare the subrogation? Did you pay any monies to Dr. Mercer for the subrogation? If yea, how much? From what bank did you draw the money? Where did you get the money? Were you then a man of means? What means did you have?

6. Did you ever purchase from Frank M. Ames, or his attorneys, a certain judgment against Wm. A. Aymar and Margaret D. Allain for $11,000, and interest and costs, now owned by Ed. J. Gay? If you say yea, state whether you did not purchase for Wm. H. Aymar, and
184 whether your name in the transaction was not used by Aymar for his convenience and purposes. Did you buy for yourself, and out of your monies pay any money on account of the purchase? Was not Thomas S. Elder, a broker, of New Orleans, employed by Aymar to make the purchase in your name, and did not said Elder so make the purchase? Is it not true that Elder never saw you, and had nothing to do with you, relative to the purchase? Did Frank M. Ames ever demand of you a compliance with the purchase? Do you know Frank M. Ames? Did he ever ask you to pay any part of the purchase price?

(Signed) GEO. L. BRIGHT,
Counsel for Chs. E. Alter and M. Allain.

With the exception of the 2d and 6th cross interrogatories above, to which we object, we adopt the foregoing cross interrogatories as our own.

(Signed) BARROW & POPE,
Counsel for Edward J. Gay.

185 We reserve the right to urge objections to the 2d and 6th interrogatories propounded by counsel for Chas. E. Alter and Misses Allain, on the ground of their not being relevant or pertinent to the matters at issue between us or to our direct interrogatories.

(Signed) H. D. OGDEN AND
CHAS. G. OGDEN.
Counsel for Grand Lake Coal Co. and Executors of Miller.

Notice to cross-interrogatories.—Issued October 16th, 1877.

United States circuit court, district of Louisiana.

FRANK M. AMES, E. J. GAY SUBROGATED,
vs.
MARGARET D. ALLAIN, C. D. ALTER, INTERVENOR. } No. 6894.

Take notice, that the Grand Lake Coal Co. of Pittsburgh, Penn., et al., have this day filed interrogatories to certain witnesses, copy whereof accompanies this notice, and that you may, if you think
186 proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.

Clerk's office, New Orleans, October 16th, 1877.

(Signed) F. B. VINOT.
D'y Clerk.

Intervenor's commission.—Issued February 1, 1877; *returned and filed October* 25, 1877.

Circuit court of the United States, holding sessions in and for the district of Louisiana.

To any judge of any court of the United States, or any commissioner of a circuit court, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme court or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States, or any notary public:

187 Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you, Frank M. Ames, of Massachusetts, and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Frank M. Ames, Edward J. Gay subrogated, is plaintiff, and Margaret D. Allain and others are defendants, and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this first day of February, anno Domini 1877, and the 101st year of the Independence of the United States of America.

(Signed) F. A. WOOLFLEY, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

188 (Endorsement:)

The execution of this commission appears in a certain schedule hereto annexed.

(Signed) THOMAS E. GROVER,
Notary Public.

U. S. circuit court for the fifth circuit and district of La.

FRANK M. AMES, EDWARD J. GAY SUBROGATED,
vs.
MARGARET D. ALLAIN & OTHERS. } 6894.

We consent that a commission issue for Chas. E. Alter, to take the testimony of Frank M. Ames, of Massachusetts, directed "to any judge of any court of the United States, or any commissioner of a circuit court, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme court or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas, of any of the United States, or any notary public."

189 And we waive proof of the official capacity of the person executing the commission.

(Signed) H. D. OGDEN AND
CHAS. G. OGDEN,
For Grand Lake Coal Co., and Ex'rs of Geo. F. Miller.
LACEY & BUTLER,
For W. H. Aymar.
DAVID N. BARRON,
For E. J. Gay.

United States circuit court for the 5th circuit and district of Louisiana.
In equity.

FRANK M. AMES, ED. J. GAY, SUBROGATED, *vs.* MARGARET D. ALLAIN AND OTHERS. } 6894.

Interrogatories to be propounded on the part of Charles E. Alter, complainant and intervenor, to Frank M. Ames, a witness, resident of Canton, Massachusetts, whose testimony is to be taken for Chas. E. Alter, by virtue of the annexed commission.

Interrogatories.

1. Were you the original plaintiff in the above entitled suit? Where do you reside?

190

2. Are you acquainted with Chs. E. Alter, Edward J. Gay, William H. Aymar, and Henry P. Redmond, or any of them? If yea, state with which.

3. Did you make a transfer of your interest in the above suit to Edward J. Gay?

4. Before you made the transfer did you ever receive any propositions from any person to buy it? If yea, state whether the propositions or negotiations about it were not in writing, by letters, and especially by letters from Mr. E. T. Merrick.

5. Annex to your answers the original propositions or letters received by you, or copies thereof, should you object to annexing the originals.

6. Have you annexed all the propositions or letters relative thereto, without exception?

7. Did you answer the propositions or letters? If yea, annex a copies of your answers, or state why you cannot do so.

8. Did you receive any payment on account of the proposition or transfer? If yea, how much, when, from whom, and to whom did you receipt for the amount?

191

9. You made a subsequent transfer to Edward J. Gay, of Louisiana; did you transfer to him any letters, papers, and documents relative to the subject-matter of the transfer? If yea, how many? Describe them as fully as you can. Have you described them all?

10. Did Edward J. Gay transfer and deliver to you any counter letter or other writing relative thereto? If yea, annex the originals or copies thereof to your answers.

11. Did you personally negotiate with Edward J. Gay? If yea, state fully the negotiation; what did you agree to do, and what did you refuse to do relative thereto?

12. Did you warrant to Ed. J. Gay the whole amount of the judgment? State fully what you did.

13. Did you make any stipulation or reservation for your protection with Edward J. Gay? If yea, state fully what you did.

14. Have you ever received from Edward J. Gay any letters relative to the transfer to him of the judgment? If yea, annex them or copies of them to your answers.

192

15. Have you ever written to Edward J. Gay any letters relative thereto? How many and when? Annex copies of them to your answers.

16. When you made the transfer to Edward J. Gay or before, did

Gay know that you had received $3,000? State all that Mr. Gay knew of what had previously occurred.

17. Do you know Mr. Eastman or Mr. Redmond? Did you ever see them? Did you ever have any transaction with them or either of them?

18. How much did Gay agree to pay you for the judgment? How much did he pay?

19. What warranty, if any, did you agree to give Mr. Gay? Did you have any conversation with Mr. Gay about warranty? If yea, state it fully. Did Gay warrant you in any way? Note what he did.

193 20. Did you send any telegraphic despatches about the matter to Mr. E. T. Merrick? If yea, annex copies of them.

21. Did you, on or about 10th April, 1876, send a power of attorney to E. T. Merrick, and on the same day write a letter to him? If yea, annex copies.

22. Did you, on or about April 29, 1876, write a letter to Mr. Gay and enclose therein abstracts from Mr. Merrick's letters and Aymar's letters?

23. Did you ever receive any letters from Mr. Aymar? If yea, annex them or copies of them.

24. Did you have any correspondence with E. T. Merrick about Gay's claim? If yea, annex it, or copy of the correspondence to your answer

25. Did you on the 30th March, 1874, send a telegram to Judge E. T. Merrick, mentioning a proposition of Aymar? Was the proposition of Aymar in writing or by telegram? If yea, annex it or a copy.

26. Have you a letter from Judge Merrick, dated 16th July,
194 1875? If yea, annex it or a copy of it.

27. Have you any other letters from Judge Merrick on the subject of the transfer of your claim? If yea, annex them.

28. Look at the copy of your letter to Judge Merrick, dated May 11th, 1876, in which you say you received a telegram from Aymar of March 29, 1874, and one from Butler of July 29th, 1875. Please annex these telegrams or copies of them to your answers.

29. In your letter to Judge Merrick, dated Canton, May 11th, 1876, you tell him to "See Mr. Gay, and see if some arrangement cannot be made to have the sale made," &c. Was any arrangement made with Mr. Gay? If yea, what arrangement was made?

30. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea,
195 set forth the same fully and at large in your answer.

(Signed) GEO. L. BRIGHT,
Solicitor for Ch's E. Alter.

Feb'y, 1877. No cross-interrogatories.

(Signed) LACEY & BUTLER,
For Wm. H. Aymar.

Reserving all legal exceptions to the admissibility of the evidence, n cross-interrogatories.

N. O., Feb'y 21, 1877.

(Signed) H. D. OGDEN AND
CHAS. G. OGDEN,
For Ex'rs of Geo. F. Miller and Grand Lake Coal Co

Objections of Edward J. Gay to direct interrogations submitted by Charles E. Alter to Frank M. Ames.

United States circuit court for 5th circuit and district of La.

FRANK M. AMES, ED. J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN & OTHERS. } No. 6894.

Before propounding cross interrogatories to Frank M. Ames on
196 the interrogatories submitted by Charles E. Alter, Edward J. Gay makes the following objections to said direct interrogatories:

To the 4th interrogatory in chief, so far as same may be understood to include the negotiation between Edward J. Gay and Frank M. Ames, it is objected that the agreement between said parties was reduced to writing, and nothing said or written before or at the time of making said agreement is admissable in evidence.

To the 5th interrogatory the same objection as above is urged and reserved.

To the 8th interrogatory, so far as same embraces the transaction with E. J. Gay, the same objection is urged and reserved.

To the 9th interrogatory the same objection is urged and reserved.

To the 11th interrogatory the same objection is urged and reserved.

To the 12th interrogatory the same objection is reserved, and the further objection that the written agreement is the best evidence of what was done.

To the 13th the same objection as previous interrogatories, 4 and seq.

197 To the 14th and 15th interrogatories, the same objections as above.

To the 18th, 19th, 20th, 24, 25, 29, the same objection is reserved.

Cross interrogatory 1st. If you state any party had made you any proposition to purchase the judgment previous to your sale to Edward J. Gay, state whether or not said party had abandoned said negotiation and had failed to carry same out, and whether or not the negotiation was not at an end when you sold to Edward J. Gay, and whether you did not so inform said Gay?

Cross-interrogatory 2d. If you state any amount was paid you on account of the propositions made you before you sold to E. J. Gay, state whether or not you were informed that the party who made said payment threatened to institute suit against you for the said sum, in the event you sold the judgment to any one else, and did you not inform Edward J. Gay of this fact?

198 Cross-interrogatory 3d. Did you ever have any information as to who Mr. Butler, of the firm of Lacey & Butler, represented in the proposition he made to you?

(Signed) BARRON & POPE,
Att'ys for E. J. Gay.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

On the fifth day of October, in the year of our Lord eighteen hundred and seventy-seven, by virtue of the foregoing commission, I caused the above named Frank M. Ames, the deponent therein mentioned, to come before me in Canton, in the county of Norfolk, and district aforesaid; and he, being then and there duly cautioned and sworn to testify the

truth, the whole truth, and nothing but the truth, relative to the cause for which the deposition is taken, in answer to the several interrogatories and cross-interrogatories thereto annexed, gave the foregoing answers by him subscribed in my presence; and the same were by me reduced to writing in his presence, and carefully read to him before he subscribed the same.

199 [SEAL] (Signed) THOMAS E. GROVER,
Notary Public.

Fees.

Magistrate's fees, taking deposition	$10 00
Witness travel & attendance	60
	$10 60

Deposition of the witness produced, sworn, and examined on the fifth day of October, in the year of our Lord eighteen hundred and seventy-seven, at the office of Thomas E. Grover, in the town of Canton, county of Norfolk and commonwealth of Massachusetts, by virtue of a commission issuing from the circuit court of the United States for the fifth judicial district, holding sessions in and for the district of Louisiana, for the examination of a witness in a certain cause depending in said court, wherein Frank M. Ames, Edward J. Gay, subrogated, is plaintiff, and Margaret D. Ahain & others are defendants.

FRANK M. AMES, of the town of Canton, county of Norfolk and commonwealth of Massachusetts, aged forty-four years, being pro-
200 duced, sworn, and examined on behalf of Charles E. Alter, complainant and intervenor, deposeth as follows:

1. To the first interrogatory on the part of said Alter, answers as follows: I was original plaintiff in the above-entitled suit. I reside in Canton, Massachusetts.

2. To the second interrogatory on the part of said Alter, answers as follows: I know Charles E. Alter and Edward J. Gay. I cannot say whether or not I have ever seen the other persons mentioned in the second interrogatory.

3. To the third interrogatory on the part of said Alter, answers as follows: I made a transfer of my interest in the above suit to Edward J. Gay.

4. To the fourth interrogatory on the part of said Alter, answers as follows: Before I made the transfer I did receive propositions to buy it. The propositions were in writing, by letters, some of which were
201 from Mr. E. T. Merrick, and one from Thos. S. Elder, and a telegram from William H. Aymar, and one from Frank N. Butler.

5. To the fifth interrogatory on the part of said Alter, answers as follows: I have annexed to this deposition all letters and telegrams in my possession relating to the subject. They are marked as follows: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and A A.

6. To the sixth interrogatory on the part of said Alter, answers as follows: I have. I have not copied portions of some letters because they were not relative to the subject but related to other matters. I have, however, copied all parts of those having any connection with this case, and they are shown in the exhibits above referred to.

7. To the seventh interrogatory on the part of said Alter, answers as

follows: My answers, so far as I have copies thereof, are included in the exhibits above referred to.

202 8. To the eighth interrogatory on the part of said Alter, answers as follows: I received three thousand dollars ($3,000) on account of the proposition in June, 1874, by the hands of my counsel, Judge E. T. Merrick, to whom I receipted for the amount.

9. To the ninth interrogatory on the part of said Alter, answers as follows: I did not send him any letter which I had received. I sent Mr. Edward J. Gay copies of parts of certain letters which I had received. I have no copies of the parts of the letters I sent him. They were, however, all taken from the letters and telegrams, copies of which are hereto annexed. I sent Mr. Gay no other papers or document that I remember of, except the Exhibits W and X.

10. To the tenth interrogatory on the part of said Alter, answers as follows: Copies of all letters and telegrams from Edward J. Gay

203 to me are hereto annexed, and are included in the exhibits above referred to.

11. To the eleventh interrogatory on the part of said Alter, answers as follows: I had a conversation with Edward J. Gay, in March, 1876, on board of a steamer on the Mississippi River. I then told Mr. Gay all my transactions concerning this property. I never had any other conversation with Mr. Gay until after the terms of the sale had been arranged between us. I neither agreed or refused to do anything at that time. Copies of all letters sent to or received from him are hereto annexed, except the abstract from letters which I sent to him above referred to.

12. To the twelfth interrogatory on the part of said Alter, answers as follows: I did not. All that I did is shown in the copies of the letters hereto annexed, particular reference being made to Exhibits O, Q, W, R, T, and Y.

13. To the thirteenth interrogatory on the part of said Alter,

204 answers as follows: For a full statement of what I did, reference is hereby made to copies of letters hereto annexed, particularly to Exhibit Y.

14. To the fourteenth interrogatory on the part of said Alter, answers as follows: I have not received any letters except those, copies of which are hereto annexed.

15. To the fifteenth interrogatory on the part of said Alter, answers as follows: I have annexed copies of all letters I wrote Mr. Edward J. Gay, except one dated April 29, 1876, and they are included in the exhibits above referred to.

16. To the sixteenth interrogatory on the part of said Alter, answers as follows: He did know I had received $3,000. I told him so in our conversation on the steamboat, in March, 1876, above alluded to. See also Exhibit T, hereto annexed.

17. To the seventeenth interrogatory on the part of said Alter, answers as follows: I cannot say that I know either Mr. Eastman or

205 Mr. Redmond; I don't know whether I ever saw them or not. I don't know that I ever had any transaction with them, or either of them.

18. To the eighteenth interrogatory on the part of said Alter, answers as follows: He agreed to and did pay me $5,500 (fifty-five hundred dollars) for the judgment.

19. To the nineteenth interrogatory on the part of said Alter, answers as follows: I had no conversation or correspondence with Mr. Gay

about a warranty. I warranted nothing to him, and he warranted nothing to me, except that he would make no claim on me for the $3,000 already paid. He made his purchase knowing all the facts.

20. To the twentieth interrogatory on the part of said Alter, answers as follows: I did not, that I remember of.

21. To the twenty-first interrogatory on the part of said Alter, answers as follows: I did send Mr. Merrick, on or about April 10,
206 1876, a power of attorney, of which I have no copy. I have annexed a copy of the letter sent at the same time—Exhibit Y.

22. To the twenty-second interrogatory on the part of said Alter, answers as follows: I did, as I have before stated. I have not the letter referred to or copies of said letters.

23. To the twenty-third interrogatory on the part of said Alter, answers as follows: I did; copies of which are hereto annexed, marked A and B.

24. To the twenty-fourth interrogatory on the part of said Alter, answers as follows: Mr. Edward J. Gay never had any claim upon me, except that I should transfer my judgment to him for $5,500.

25. To the twenty-fifth interrogatory on the part of said Alter, answers as follows: I did. See Exhibit U. Aymar's proposition was by telegram. See Exhibit B.

26. To the twenty-sixth interrogatory on the part of said Alter, answers as follows: I have. See Exhibit J.

207 27. To the twenty-seventh interrogatory on the part of said Alter, answers as follows: Copies of all letters are annexed.

28. To the twenty-eighth interrogatory on the part of said Alter, answers as follows: I have annexed copies as requested. See Exhibits B and K.

29. To the twenty-ninth interrogatory on the part of said Alter, answers as follows: No arrangement was made with Mr. Gay.

30. To the thirtieth interrogatory on the part of said Alter, answers as follows: No.

Answers to cross-interrogatories.

1. To the first cross-interrogatory on the part of said Gay, answers as follows: All negotiations relating to the purchase of the judgment had failed to be carried out before I sold to Edward J. Gay. I think I so informed Mr. Gay.

2. To the second cross-interrogatory on the part of said Gay,
208 answers as follows: I think my counsel, Judge Merrick, informed me that the party who made said payment threatened to institute a suit against me in the event of my selling said judgment. I think probably I did so inform Mr. Edward J. Gay.

3. To the third cross-interrogatory on the part of said Gay, answers as follows: From representations made to me by my counsel, Judge Merrick, I supposed he, Mr. Butler, acted for Mr. Aymar. I had no knowledge other than this.

(Signed) FRANK M. AMES.

Witness:

(Signed) THOMAS E. GROVER,
Notary Public.

Exhibit A.—Copy.

NEW ORLEANS, *February* 28, 1873.

FRANK M. AMES, Esq.,
Boston:

DEAR SIR: Since my recent proposition to you relative to a distribution of the portion of the crop of sugar to be made on the Australia plantation during the current year, coming to me under my arrangement with the hands, I have become so situated as to be able to offer to you one-half of my portion of the crop of sugar as aforesaid, if you will consent to extend the time for foreclosing your mortgage against the plantation for one year.

209

My great desire is to make the property realize as much as possible, to go towards the payment of my debts; but, if my plantations are put upon the market at this season, none of them would sell for anything like their value; indeed, in all probability, not for enough to pay half the mortgages.

Trusting that you will authorize your attorneys to discontinue legal proceedings upon my giving them a satisfactory written agreement embracing the proposition herein mentioned,

I am, very respectfully, yours, &c.,
(Signed) WILLIAM H. AYMAR.

P. S.—I am working all my places this year on shares, and have every reason to hope to be able pay the balance of your note at the end of the year.

Exhibit B.—Telegram.

210 NEW ORLEANS, LA., *March* 28, 1874.

FRANK M. AMES:

Parties will buy your note against Australia for sixty-five hundred dollars, to be consum'ated in sixty days. Will you accept above for your whole claim? Answer paid.

(Signed) WILLIAM H. AYMAR.

Exhibit C.

NEW ORLEANS, *April 3d*, 1874.

Judge E. T. MERRICK, *N. O.:*

SIR: I am instructed to offer the sum of eight thousand dollars for the whole claim of F. M. Ames against Australia plantation, with 90 days to consum'ate the payment. Also to pay in addition your fees and costs of court within ten days after you accept this proposition—which you will please dispatch immediately, as it is necessary to know at once. The interest or benefit in the seizure of sugar is also to be transferred to the party in whose interest this proposition is made.

Resp'y,
(Signed) THOS. S. ELDER,
Broker.

211 *Exhibit D.*

NEW ORLEANS, *April 2d*, 1874.

FRANK M. AMES, Esq.,
Canton, Mass.:

DEAR SIR: Major Williamson has returned from Australia and finds

the place is becoming dilapidated. The levees are destroyed by the high waters, but the neighbors are giving them their attention. He says there are 47 hhds. of sugar there still belonging to Aymar, which would give you twenty-four. But there some obstacles to the sale of A. still remain.

Your telegram of March 30 is at hand, and I have had a conference with the broker who is managing for Aymar, and submitted to him your counter proposition. We received a letter from Col. C. W. Keep, who says that he knows a party who would willingly buy the plantation if he could get it cheap enough. This party, he says, resides in New York.

I think your offer to take $9,000 for the note very reasonable, but you did not say whether your interest in the sugar was to be sold with it.

Yours, truly,
(Signed) E. T. MERRICK.

212 P. S.—The sale would be of the suit in chancery and decree in your favor. The note is merged in the decree.

Exhibit E.

NEW ORLEANS, *April* 3, 1874.

FRANK M. AMES, Esq.:

DEAR SIR: I wrote you yesterday. Since writing I have received the enclosed proposition from a broker, Thos. J. Elder. He desired I should telegraph, but I declined to do so until you receive my letter. He also requested me to ask you to reply to this by telegram.

Respectfully, y's, &c.,
E. T. MERRICK.

Exhibit F.

NEW ORLEANS, *April* 28, 1874.

FRANK M. AMES, Esq.,
Canton, Mass.:

DEAR SIR: Mr. Elder has been calling almost daily in regard to purchasing the decree against W. H. Aymar and Mrs. Allain. Parties, he says, have been up to see the place.

Elder has withdrawn his first proposition and now offers $7,000
213 as an extreme price for the note payable—$3,000—within 30 days; residue before January 1st, 1875; decree to be retained as security for performance, and purchaser to pay all expenses and costs. I consented to write this proposition to you, with a request that you would telegraph on receipt. There is always a depression of the price of lands in market with every overflow, but I do not think that any reason to sacrifice a good place; but I do not wish to influence your opinion.

Very respectfully yours,
(Signed) E. T. MERRICK.

Exhibit G.

NEW ORLEANS, *May* 8, 1877.

FRANK M. AMES, Esq.,
Canton, Mass.:

DEAR SIR: Mr. Elder accepted the proposition contained in your telegram, viz: Eight thousand dollars and the fees, viz., three thousand dollars in cash within thirty days or less time, the balance to be paid

between this time and next January. All the papers to be held
214 by us as security for the deferred payments. I find this clause in Elder's proposition, which I presume is not to interfere with the payment in thirty days, viz: "Whatever may be realized from your lien on the sugar will be considered as a part of the first cash payment." It is an additional security. Our fees are to be paid—one-half in 60 to 90 days, and residue by or before 1st January next.

Very respectfully y'rs,

E. T. MERRICK,
For Race, Foster & E. T. Merrick.

Exhibit H.

NEW ORLEANS, *June* 3, 1874.

FRANK M. AMES, Esq.,
Canton, Mass.:

DEAR SIR: The three thousand dollars has been just paid by Frank N. Butler, esq. (of Mess. Lacey and Butler), and the same is to your credit. What shall we do with the funds?

Respectfully y'rs, &c.,
(Signed) E. T. MERRICK,
For Race, Foster & Merrick.

215 *Exhibit I.*

NEW ORLEANS, *March* 27, 1875.

FRANK M. AMES, Esq.,
Canton, Mass.:

DR. SIR: We have had numerous promises that something should be done towards the payment of the decree in chancery, but Aymar and his friends have failed to make any other payment than that paid over to you.

We have been reluctant to send the marshal up to make a seizure, and hoping to see you in person soon, we thought we lost but little in seeing what Aymar could do.

Your favor of 18th inst. is received.

Yours, truly,
(Signed) MERRICE, RACE & FOSTER.

Exhibit J.

ABINGDON, VA., *July* 16, 1875.

FRANK M. AMES, Esq.:

DR. SIR: Not having received answer to my former letters, I am doubtful whether this will find you at home.

216 Since my arrival here I have by to-day's mail another proposition of compromise from Mr. Butler, of the Aymar judgment or decree. He proposes for his client, in lieu of former contract, to pay $1,000 cash, $2,000 in 90 days, in addition to the $3,000 paid. Note, suit, and decree to be retained by me until payment, and then turned over to Butler for his client. Butler's client says he can carry this out without fail. I send this proposition at once to you, for your consideration, for Mr. Butler says he wants an immediate answer. Write me at this place.

Yours, truly,
(Signed) E. T. MERRICK.

Exhibit K.—Telegram.

NEW ORLEANS, LA., *July* 29, 1875.

F. M. AMES:

No crop nor seed on Australia. Mules and carts sold for taxes, and taken away some time since. Am told place will not bring seven thousand dollars. Offer made Judge Merrick, and court costs, best I can do.

FRANK N. BUTLER.

217 *Exhibit L.*

NEW ORLEANS, *August* 20, 1875.

F. M. AMES, Esq.,
Canton, Mass.:

DEAR SIR: In answer to your telegram of last night, we say that the proposition of Frank N. Butler, for the compromise of your suit vs. Allain and Aymar, in the U. S. circuit court, is as follows, viz:

First. To pay you in cash $2,000.

Second. To pay our fee of $1,000.

Third. To pay all costs now due to the clerk and marshal.

He says the plantation is not under cultivation, and that the sheriff has seized and sold all the mules for taxes.

Yours, truly,
(Signed) MERRICK, RACE & FOSTER.

Exhibit M.—Telegram.

NEW ORLEANS, LA., *Apr.* 1*st*, 1876.

F ANK M. AMES:

We are offered forty-five hundred dollars cash for Aymar's judgment, fees and costs. Answer immediately.

MERRICK, RACE & FOSTER.

218 *Exhibit N.*

NEW ORLEANS, *Apr.* 4, 1876.

FRANK M. AMES, Esq.:

D'R SIR: In reply to your telegram of yesterday, we have to say that Mr. Butler, after seeing your dispatch to us, said he would keep his offer of $4,500 for the Australia judgment open for one week, and he desired us to ask you to telegraph at once on the receipt of this letter, so that if the proposition is not accepted he can use the money. When the first compromise was made, the agreement was that after paying you the $3,000 first installment, we were to be paid our fee of $1,000. The proposition in August last, communicated you in our letter of Aug. 20, 1875, was 1st, to pay you $2,000; 2d, our fee, $1,000; 3d, the small amount of marshal's and clerk's fees. The proposal now is that the party will pay you $4,500 cash, and you are to pay our fees and the costs of clerk and marshal, if any are due. That is, you are to
219 sell the judgment free of encumbrances, for $4,500 cash. The costs are inconsiderable. If this is all you get, we shall feel disposed to make a slight abatement on the above fee.

Yours, truly,

MERRICK, RACE & FOSTER.

Exhibit O.—Telegram.

NEW ORLEANS, LA., *Apr.* 14, 1876.

FRANK M. AMES:

Gay will allow three thousand credit, but will not guarantee it you against others. Answer immediately.

E. T. MERRICK.

Exhibit P.

NEW ORLEANS, *May* 6, 1876.

F. M. AMES, Esq.,
Canton, Mass.:

D'R SIR: I saw Mr. Butler this morning; being informed that you had not decided what you would do, and that you had given me no positive instructions, he said that Alter was going to commence immediate proceedings and sell the place. This I think of importance, because a seizure under a State decree would complicate matters.

Respectfully y'rs,

E. T. MERRICK,
For M., R. & F.

220 *Exhibit Q.*

NEW ORLEANS, *March 23d*, 1876.

FRANK M. AMES, Esq.:

DEAR SIR: I heard to-day that you had gone home, and as Judge Merrick thinks you made no arrangement with reference to the judgement bearing on the Australia Plantation, I have concluded to drop you a line. If you still hold this judgement, will you take ($4,500) forty-five hundred dollars cash for it? If you desire to sell it, give me your lowest figure with the right to accept your offer within eight days after receipt of your letter, so as to give me a little time to investigate the condition of the other notes as far as practicable, and I will give you a prompt answer.

Very respectfully yours,

EDWARD J. GAY.

Exhibit R.—Telegram.

NEW ORLEANS, LA., *Apr.* 6, 1876.

FRANK M. AMES:

221 Will accept your offer. Send power attorney, transfer judgment, and subrogate your rights immediately. Answer.

EDWARD J. GAY.

Exhibit S.

NEW ORLEANS, *Apr.* 6, 1876.

F. M. AMES, Esq.:

DEAR SIR: Your favor of 28th ultimo has been received, and I have this evening sent you the following despatch: "Will accept your offer; send power attorney to transfer judgment and subrogate rights immediately; answer."

I have not been able to learn much about the condition of the other

notes, as there is no chance to get information until steps are taken to make the holders show their hands, and this it is important should be done at once, and therefore I want you to send power of attorney to whoever is to represent you here to transfer the judgment, and subrogate me to your existing legal rights. I do not wish it known
222 that you have sold until the transfer is made, as I will not proceed as you would if you continue to own it. Your letters fixes the price at $5,500 cash, or note at 3 months with interest. I would like to be advised who you will authorize to act for you, and will settle with him to your satisfaction.

Very respectfully, yours,

EDWARD J. GAY.

Exhibit T.

NEW ORLEANS, *April* 15, 1876.

F. M. AMES, Esq.:

DEAR SIR: I received your telegraph and letter of 10th, and Judge Merrick has received your power of attorney, but hesitates to carry out the transfer to me, owing to some casual remark in your letter. I purchased the note and judgment with the understanding that it had a credit on it for three thousand dollars, but of course I could make no claim on you for that sum, as I am fully advised of it.

I have, after waiting since yesterday on Judge Merrick to make
223 the transfer, given him notice that I am ready to comply with the terms, &c., fixed by your letters of 28th March and 10th inst.

Very truly, yours,

EDWARD J. GAY.

Exhibit U.—Telegram.

CANTON, MASS.,
March 29 *or* 30, 1874.

Judge E. T. MERRICK,
New Orleans, La.:

Will sell Allain note for nine thousand dollars, and legal expenses within sixty days. Aymar proposes $6,500.

(Signed) F. M. AMES.

Exhibit V.—Telegram.

CANTON, MASS., *April* 9, 1874.

Judge E. T. MERRICK,
New Orleans, La.:

Elder's proposition received. Substitute nine for eight thousand, and accept. Security unquestionable.

F. M. AMES.

Paid. Repeat message.

Exhibit W.

CANTON, MASS., *March* 29, 1876.

E. J. GAY, Esq.:

224 DEAR SIR: Yours of the 23d is received. I will sell my note for ½ of its face value, viz: $5,500 cash, or 3 months with interest at 6% (six.)

As I told you, I found the property in much better condition than I expected.

I very much doubt whether either the note of Dr. Mercer or Mr. Alter will hold as against the plantation. I have reason to believe that they have been paid in part, if not in full, and are now held as additional security on the property. Even though they should prove to be good, I think the property of enough value to be purchased for $20 to $25,000 as an investment. This would make my note worth all or more than I ask for it.

Yours, truly,

F. M. AMES.

Exhibit X.

CANTON, *April* 10, 1876.

E. J. GAY, Esq.:

DEAR SIR: I have sent by this mail to Judge E. T. Merrick power of attorney to sell and transfer all my title in note of M. D. Allain,
225 dated July 3d, 1869, payable 3 years after date, &c., & my interest in the judgment U. S. D. court, dated May 24, 1873, to you for the sum of $5,500 cash.

Yours, truly,

F. M. AMES.

Exhibit Y.

CANTON, *April* 10*th*, 1876.

Judge MERRICK:

DEAR SIR: I send herewith power attorney for you to sell and transfer all my right and title in mortgage note signed by M. D. Allain, dated 3d July, 1869, and all my power, &c., under judgment in U. S. circuit court, rendered May 24, 1873, to Edward J. Gay, of New Orleans, for the sum of five thousand five hundred ($5,500) dollars. It is understood that the money heretofore paid me on this note ($3,000) is to remain with me in any event; that under no circumstances can either Gay, or the party who paid the amount to you, recover it in any suit against me.

Yours, truly,

F. M. AMES.

226 *Exhibit Z.*

CANTON, *April* 29, 1876.

Judge MERRICK:

D'R SIR: Yours of April 17th, came at hand during my absence. I send herewith copy of letter sent Mr. Gay, and copy of extracts from your and Aymar's letters. I never supposed you were dealing with any person beside Aymar. Your letters will not warrant any other supposition. How can Aymar receive any money he may have paid on the note, even though he borrowed the money. The party (if not Aymar) proposes to repudiate his contract, promising to pay $8,500, $3,000 cash, and $5,500 in less than 8 months; a year ago proposing $2,000 as outside price, &c., &c. I am surprised that you did not make proper papers at the time. I never for a moment supposed there was anything loose in the transaction. The idea occurred to me while writing you to guard the $3,000, & I so noted it to you.

227 Please see that everything is all straight, and settle the matter with Mr. Gay. Of course I shall not sell the note for $5,500, and have party receive the $3,000.

Yours, truly,

F. M. AMES.

Exhibit A. A.

CANTON, *May* 11, 1876.

Judge E. T. MERRICK,

DEAR SIR: Your favors of the 5th and 6th inst. are received. I do not know what you mean by saying, "The proposition of the broker was forwarded to you when you accepted the first proposition under which the first three thousand dollars were paid," unless you refer to some letter of yours.

I had a letter from you, enclosing one from "Thos. S. Elder," a copy of which is enclosed (dated April 3d, 1874), a telegram from Aymar, March 29th, 1874, and one from Butler, July 29, 1875, which are all that I have from any one in relation to sale of property prior to those from Mr. Gay.

228 I had one from Aymar in February, 1873, proposing to give me a portion of the crop, "If you will consent to extend the time for foreclosing your mortgage against the plantation for one year."

All other communications are in your own writing. I desire to have this matter amicably settled.

You say that "I will be entitled to retain, under our law, so much as will indemnify you for a non-compliance on his part." He was to pay me $3,000 in cash, $5,500 in, say, 7 months, from June 3d, 1874, and pay for legal expenses and your fees, &c. These expenses will amount to, say, $140 and your fees. We now propose to sell the note for $5,500, which, with the $3,000 paid, and expense and interest, will not be any more than we were to receive in June, 1874, and besides this we pay you fees in addition. In this view, if correct, we would be entitled to all we have received.

229 This party, whether it be Aymar or his broker, does not propose to carry out his proposition at any rate. If you will consult with Mr. Gay in the matter, and see if this can not be satisfactorily arranged, I would be much pleased.

It would probably be better to have the property advertised for sale at once under the authority of the U. S. court than to have the matter further complicated.

Please see Mr. Gay and see if some arrangement cannot be made to have sale made.

I will sacrifice $500 & let him have the note for $5,000 if he will guarantee me against further loss.

You are to authorize to accept $5,000 for the note under this condition: Gay to guarantee me against any loss or expenses in case the party who paid the $3,000 should bring a suit to recover the money or any portion thereof. You will remember that there was quite a

230 sum due me for the sugar that was made under the arrangement with Aymar to pay ¼ of all the sugar of crop of 1873.

Yours, truly,

F. M. AMES.

Commission on behalf of the Grand Lake Coal Company.—Issued November 10th, 1877.—Returned & filed Feb'y 5th, 1878.

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

To Henry J. Labatt, esq., United States commissioner, Galveston, Texas.

Know ye that reposing special trust and confidence in your integrity

and ability, we hereby authorize and require you that you call and cause to come before you Henry P. Redmond, of Galveston, Texas, and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in
231 the said court, wherein Frank M. Ames, Edward J. Gay, subrogated, is plaintiff, and Margaret D. Allain and others are defendants, and the same examinations, so taken and reduced to writing, you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 10th day of November, anno Domini 1877, and the 102d year of the Independence of the United States of America.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

NOTE.—See pages 177 & 180 for interrogatories and cross-interrogatories annexed.

UNITED STATES OF AMERICA,
Eastern District of Texas, County of Galveston:

232 On this eleventh day of December, A. D. 1877, at Galveston aforesaid, before me, Henry J. Labatt, a commissioner of the United States in and for the eastern district of Texas, to reside at Galveston, by virtue of the annexed commission, issued out of and under the seal of the circuit court of the United States for the fifth judicial circuit in and for the district of Louisiana, in cause No. 6894, wherein Frank M. Ames et al. are plaintiffs and Margaret D. Allain et al. are defendants, came Henry P. Redmond, of Galveston, Texas, the witness designated in said commission, and to me personally known, and whom I duly examined on the annexed interrogatories, under oath, touching and concerning certain matters and things in said cause, and the same examination so taken and reduced to writing by me in presence of said witness were by me then carefully read over to said witness, and by him corrected in any particular he desired, that the same be cor-
233 rect, and then he signed the same as his evidence in this cause, and the same is comprised in the annexed four pages.

To certify which I hereto set my hand and seal this eleventh day of December, 1877.

[SEAL.] (Signed) HEN. J. LABATT,
U. S. Commissioner E. D. of Texas.

In answer to the first interrogatory he says: I did not know George F. Miller, but I do know Wm. H. Aymar.

In answer to the second interrogatory he says: I delivered to Lacy & Butler, my attorneys, and they delivered it to said Miller or his attorneys, as they were instructed to do. He received it as a valid & valuable consideration to satisfy a demand he had against Aymar and F. Eastman.

In answer to the third interrogatory he says: I pledged said described mortgage note as stated in the question, and at the time of the pledge. I delivered it to Lacey & Butler to be delivered to Miller with my note.

234 In answer to the fourth interrogatory he says: I was not the owner but I was the holder of it. The note was purchased from

Dr. Mercer with money furnished by F. Eastman, and purchased in my name by my attorneys, Lacey & Butler, and at the time of the pledge I held that collateral for F. Eastman, and turned it over to my attorneys, Lacey & Butler, to be delivered as a collateral to secure my note given for a debt of F. Eastman and W. H. Aymar.

In answer to the 1st cross-interrogatory he says: I never was indebted to George F. Miller. I gave Miller the note through my attorneys, as I have said before. What he gave my attorneys in return I do not know. They should have got a cancelment of the debt due by Eastman and Aymar. I have answered about the Allain note. It was bought in my name for Eastman, and held by me for him; he supplied the money to buy it, and I turned it over as collateral, at *at* his
235 request, to cancel his and Aymar's debt to said Miller.

In answer to the second he says: I was acquainted with Frederick Eastman. I do not know if he was ever employed by Aymar, but he was not in his employ when I knew him. He was in business for himself. I have stated all that I know about Eastman & Aymar's connection. I know nothing else.

In answer to the third he says: I was never in employment of Aymar. Aymar never used my name in any manner with my consent for such purpose, and I do not believe he used it without my consent. I never heard he did. Aymar did not use me or my name with Dr. Mercer or George F. Miller, but Eastman did. He, Eastman, placed $3,500 with Lacey & Butler for a subrogation of his rights (Dr. Mercer) against Aymar & Eastman, and about May 20th I was so subrogated to Dr. Mercer's rights against them. The whole transaction took place with Eastman.

236 In answer to the 4th cross-interrogatory he says: I do not know if the Mrs. Allain note belonged to Aymar or not. I do not know if it is the same note he pledged to Dr. Mercer, as I know of no such pledge. Aymar did not deliver that note to me. I purchased it with money supplied by Eastman, and have given all the information I possess about that note.

In answer to the 5th cross-interrogatory he says: Aymar did not arrange the Mercer claim and suit, but Eastman did, as I have stated. I did not know Aymar in the matter, and I have stated all the facts, that Eastman gave me the $3,500, which I placed with Lacey & Butler.

In answer to the 6th cross-interrogatory he says: I had no transaction of the kind with Aymar. It was with Eastman, as I have stated. I do not know if Thomas S. Elder had anything to do with it. I left the $3,500 with Lacey & Butler, and they bought it in my name.
237 I do not know Frank Ames. Elder never saw me about this matter. Frank Ames never spoke to me about this matter.

(Signed) H. P. REDMOND.

Subscribed & sworn to as his answers to interrogatories this 11th Dec. 1877.

[SEAL.] (Signed) HEN. J. LABATT,
U. S. Com'r E. D. of Texas, at Galveston.

Fee $5.00.

In answer to the first cross-interrogatory he says: I never was indebted to George F. Miller in any sum or manner. I placed my note in the hands of Lacey & Butler, my attorneys, to settle a claim of Miller against Aymar & Eastman. Miller gave me nothing for the note. I do not know that Aymar was indebted to Miller, but I presume he was.

It is not true that at the request of Aymar, or to serve his purposes, I gave Miller my note. I did it at the request of Eastman. I did not know Aymar in the matter at all. Aymar did not give me, and I did not receive from Aymar, a mortgaged note past due, made by Mrs.
238 M. D. Allain, and I did not deliver it to Geo. F. Miller, for himself or otherwise, or for some coal company for which he was acting. I placed such a note, according to the best of my recollection, with my note in the hands of Lacey & Butler, my attorneys, and it was to be delivered to Miller by them as collateral for my note. I got that note from Eastman for that purpose. The circumstances are, that Eastman gave me such a note to be placed as collateral with my note, to be delivered to Lacey & Butler, and they were to give it to Miller. My note was to satisfy a claim of Miller's against Aymar & Eastman, as I understood it; that is all the circumstances I know about.

In answer to the second he says: I am acquainted with Frederick Eastman. I do not know whether he ever was in the employment of Aymar or not; at the time I knew him, he was not. I do not know that Aymar used him for the purpose of covering his transactions, and to pro-
239 tect himself from his creditors. I do not think he did, from my knowledge of Eastman. That is all I know about it. I do not know of a single transaction wherein Aymar thus used Frederick Eastman. I have stated all I know relative thereto.

In answer to the third, he says: I never was in the employment of Aymar. It is not true that Aymar used my name with my consent for the purpose of covering his transactions or to protect himself from his creditors. He never asked me. He did not so use me or my name in a transaction with Dr. W. N. Mercer, or in one with George F. Miller.

In answer to the fourth, he says: I do not know that the note for $11,000 made by Mrs. M. D. Allain, dated July 3, 1869, payable one year after date, was the property of Wm. H. Aymar. I do not know if it is the same note that he pledged to Dr. W. N. Mercer, and now filed in the suit described. Aymar did not at any time deliver that note to me, or caused me to make my note to Geo. F. Miller, or deliver
240 the $11,000 note to Miller as a collateral security. I became possessed of the note for $11,000 by Eastman handing me the money, which I gave to my attorneys, Lacey & Butler, and they, with that money, bought the note from Dr. Mercer, as I remember. I never saw the note that I remember.

In answer to the 5th, he says: It is not true that Aymar paid or settled the claims and suit of Dr. Mercer, or caused said Mercer to subrogate me to his rights; but Eastman did. I really had no interest in the subrogation, and was only permitting my name to be used for that purpose by Eastman, but not by Aymar. I do not know if Aymar's counsel made the arrangement or prepared the subrogation. I did not know Aymar in the transaction. I handed the money—that is, Eastman's check—to Lacey & Butler to pay Dr. Mercer for the subrogation. The check was for $3,500, I think. I did not draw the money. I had no means at that time, and was not a man of means.

241 In answer to the sixth, he says: I do not remember if such a purchase was ever made from Frank M. Ames, or his attorneys, of a certain judgment against Wm. M. Aymar and Margaret D. Allain for $11,000, and interest and costs, now owned by E. J. Gay. Eastman may have purchased such a judgment in my name, or may have furnished me the money and instructed me so to purchase; but if I did it has escaped my recollection at this time, and I have no memorandum or data to refresh my memory. I did not purchase for Wm. H. Aymar. If

such a purchase was made, it was for Eastman; my name in the transaction, if used at all, was not used by Aymar for his convenience and purposes, but was used by Eastman. If I bought, I did not buy for myself, or out of my monies, or pay any money on account of the purchase other than what Eastman gave me. Thomas S. Elder was not employed by Aymar to make the purchase, to my knowledge, in my name, as I
242 did not know Aymar in the transaction, and did not make the purchase to my knowledge. It is true Elder never saw me, and had nothing to do with me relative to the purchase. Frank M. Ames never demanded of me a compliance with such a purchase, that I remember. I do not know Frank M. Ames. He never asked me to pay part of the purchase price, that I remember. Such a purchase may have been made through Lacey & Butler in my name, at Eastman's request, of me, and I do not remember of it.

I have answered all these questions as fully as I am able, without reservation.

(Signed) H. P. REDMOND.

UNITED STATES OF AMERICA,
Eastern District of Texas, County of Galveston:

On the second day of February, A. D. 1878, at Galveston, aforesaid, before me, Henry J. Labatt, a commissioner of the United States in and for the eastern district of Texas, to reside at Galveston, by virtue of the annexed rule issued out of and under the seal of the circuit
243 court of the United States for the 5th judicial circuit in and for the district of Louisiana, in cause No. 6894, wherein Frank M. Ames et al. are plaintiffs, and Margaret D. Allain et al. are defendants, came Henry P. Redmond, of Galveston, Texas, the witness designated in said commission, and to me personally known, and whom I duly examined on the annexed cross-interrogatories under oath touching and concerning certain matters and things in said cause, and the same examination, so taken and reduced to writing by me in presence of said witness, were by me then carefully read over to said witness and by him corrected in any particular he desired, that the same be correct; and then he signed the same as his evidence in this cause, and the same is comprised in the annexed five pages.

To certify which I hereto set my hand and official seal this 2d February, 1878.

(Signed) HEN. J. LABATT,
U. S. Com'r E. D. of Texas.

Intervention of R. M. Walsh.—Filed Nov. 24, 1877.

244 U. S. circuit court for the district of Louisiana.

FRANK M. AMES, EDWARD J. GAY, SUBROgated,
vs.
MARGARET D. ALLAIN, WIFE OF SOSTHENE Allain, et als. } No. 6894.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

Robert M. Walsh, a citizen of the State of Louisiana, and a resident of the city of New Orleans, brings this his bill of complaint, in the nature of a bill of intervention, against the parties to this suit, viz:

Frank M. Ames, a citizen of the State of Massachusettts, and Edward J. Gay, claiming under subrogation from said Ames, Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, and Miss Victoria Elizabeth Allain, the children and sole heirs of Margaret D. Allain, deceased, all citizens of the State of Louisiana; and William Henry Aymar, a citizen of the kingdom of England, and resident of this
245 State; and against Andrew K. Brown and Charles Whiting, testamentary executors of George F. Miller, citizens of Louisiana, and against Jack Wharton, marshal for the district of Louisiana.

And thereupon your orator complains and says:

Art. I. That on the 24th of May, 1873, Frank M. Ames, the plaintiff in the above entitled suit, obtained a judgment therein, whereby it was ordered, adjudged, and decreed:

"That the said mortgage, in favor of said complainant, Frank M. Ames, for the amount of said mortgage-note, held by him, viz, for the sum of eleven thousand dollars, with one year's interest thereon, at six per cent., and the residue of the interest on said promissory note at eight per cent. per annum, from the 3d day of July, A. D. 1871, until paid, and for attorneys' fees at five per cent. on the said sum, and interest and costs, upon the Australia plantation, situated partly in the parish of West Baton Rouge, La., and Iberville, in this State, on the right bank of the Mississippi River, fronting thereon, and forming the point known as Point Manchac; said tract of land being cultivated as
246 a sugar plantation, bounded on the upper line by the land of Valsin Tullier (exclusive of the Brackin tract, containing about ninety acres), containing in all about fifteen hundred and one $\frac{34}{100}$ acres, or seventeen hundred and seventy-four superficial arpents & fifty-three hundredths of an arpent, and being composed of different tracts, acquired by Sosthene Allain, as per plan of said plantation, surveyed by Auguste Wrotnowski, in March, A. D. 1860; said plan being or having been in the hands of Felix Grima, a notary public in the parish of Orleans, together with all and singular the buildings and improvements thereon, consisting of a brick sugar-house and mill with slated roof, machinery, dwelling-house and out-house, negro quarters, stables, and other improvements and appurtenances thereto belonging or in any wise appertaining; and also all rights, and ways, and immunities thereto belonging, and all the personal property and effects on said plantation, and all the cattle, mules, horses, stock, wagons, tools, harness, and agricultural implements, &c., of whatever nature or kind now on
247 said plantation, be recognized and declared executory thereon.

"And it is further ordered, adjudged and decreed that said tract of land, with its fixtures & appurtenances aforesaid, be seized and sold according to law, and after the usual advertisements, for real estate, to pay said sum of eleven thousand dollars; interest as aforesaid, five per cent. attorney's fees, and costs of copies and costs of suit, and that execution issue accordingly; and it is further ordered, adjudged, and decreed that if the sale of said mortgage' property shall fail to produce enough (reference being had to the other mortgage notes outstanding) to pay and satisfy said promissory note held by complainant for $11,000 and interest and five per cent. for attorney's fees, and costs, it is ordered, adjudged, and decreed that execution issue against both William H. Aymar and Margaret D. Allain, and each of them, for any balance, debt, attorney's fees aforesaid, and costs which may be due the complainant, over and above that portion of the proceeds of the sales of said
248 mortgaged premises, to be applied to said debt, interest, fees, and costs due complainants."

Art. II. Your orator shows that the said judgment was rendered upon a note made by Mrs. M. D. Allain, for $11,000.00 payable at 3 yr's after date, with interest, secured by mortgage, on the plantation described in said decree and more fully described in an act of sale made by Amos B. Merrill to Margaret D. Allain, on the 3d of July, 1869, and passed before Edward G. Gottschalk, a notary public in the city of New Orleans, a copy of which will be produced on the trial of this cause.

Art. III. Your orator shows that by said act of sale Mrs. Allain, as part of the purchase price, made and delivered to her vendor, Amos B. Merrill, three promissory notes, made by her, to her own order, and by her endorsed, each for $11,000.00, payable respectively at one, two, and three years after date, with interest at six per cent. per annum from date until maturity, and thereafter, if not then paid, at the rate of
249 eight per cent. per annum, and concurrently secured by vendor's lien and by mortgage, as will more fully appear by said act of sale; which lien and mortgage was recorded in the recorder's office for the parish of West Baton Rouge on the 20th July, 1869, in record of mortgages No. 1, fo's 79, 80, 81; entry No. 43; and in the office of the recorder mortgages for the parish of Iberville, in book No. 9, entry No. 310.

Art. IV. Your orator shows that the said William H. Aymar, a citizen of England, by act dated 7th July, 1869, before Selim Magner, late a notary public for the parish of Orleans, assumed the payment of the aforesaid notes with interest, attorney's fees and costs, as will more fully appear from a duly certified copy of said act, to be produced on the trial hereof.

Art. V. Your orator shows that on or about the 3d day of June, 1874, Frank M. Ames, being the true and bona fide holder and owner of the note and mortgage, and of the judgment herein rendered thereon as aforesaid, agreed to sell, and did sell to one Henry P. Red-
250 mond, of the city of New Orleans, the aforesaid note and mortgage, and the judgment rendered thereon, for the price and sum of eight thousand dollars, of which amount, as your orator is informed and believes to be true, three thousand dollars was then paid by the said Redmond to the said Ames in ready cash, and the balance of said price, namely, five thousand dollars, said Redmond agreed to pay at a future date; that by the transfer aforesaid said Frank M. Ames, at the date aforesaid, viz., on the 3d day of June, 1874, parted with and gave up to said Redmond, all his right, title, interest, and claim in and to said note, mortgage, and judgment, absolutely, to the extent of three-eighths thereof, and conditionally to the remaining five-eighths.

Art. VI. Now your orator shows unto your honors that notwithstanding the sale and transfer made by said Frank M. Ames to said Henry P. Redmond on the 3d day of June, 1874, of all his right, title and
251 interest in and to the note and mortgage referred to in the judgment rendered herein, and in and to said judgment and decree; nevertheless, the said Ames did, in and by a certain act passed before Nicholas Browse Trist, a notary public for the parish of Orleans, on the seventeenth day of June, 1876, assume to be the owner of the judgment and decree rendered herein, and did pretend to sell and convey unto Edward J. Gay, of the city of New Orleans, the aforesaid judgment, subrogating said Edward J. Gay in and to all the right, actions, liens, privileges, remedies, and mortgages which result from said decree, and the note upon which it is based, against the defendants herein and against said Australia plantation, as will more fully and at large appear

from the said notarial act, a copy of which is hereunto annexed and made a part of this your orator's bill of complaint.

Art. VII. Your orator shows that heretofore, to wit, on or about the day of , A. D. 187 , the said Henry P. Redmond sold and transferred unto Frederick Eastman, then of the city of New
252 Orleans, all his right, title, and interest in and to said note, mortgage, and decree acquired by said Redmond, as aforesaid, from said Frank M. Ames; and on or about the fourteenth day of June, 1877, your orator acquired by a certain sale, transfer, and conveyance, and for a valid consideration, all the right, title, interest, and claim of the said Frederick Eastman, and his assignor, Henry P. Redmond, in and to the aforesaid note, mortgage, judgment, and decree, together with all the rights of action, liens, privileges, remedies, and mortgages which result from said judgment and decree, and from the note and mortgage upon which the same is based, with authority to use, enjoy, and exercise the said rights, actions, liens, privileges, remedies, and mortgages in the same manner and to the same extent as they might or could have been by the said Frederick Eastman, and the said Henry P. Redmond.

Art. VIII. Your orator shows that notwithstanding the existence of the facts disclosed as aforesaid in articles V, VI, & VII of this
253 your orator's bill of complaint, the said Edward J. Gay, with full knowledge thereof, and after due notice given him of the existence of such facts, did wrongfully, knowingly, and without acquiring any lawful right or title thereto, pretend to acquire & purchase from said Frank M. Ames the note, mortgage, and decree hereinabove referred to.

Art. IX. Your orator shows that he is the true and lawful owner, by an absolute title and transfer, of three-eighths of said note, mortgage, and judgment, and of all rights, actions, liens, privileges, remedies arising or accruing thereunder.

Art. X. Your orator shows that the mortgaged property aforesaid was ordered to be sold by this honorable court, and the same was sold in block on the second day of September, 1876, for the sum of $28,900.00, which amount, under the further orders of the court, has been retained in the hands of the marshal for future distribution.

Art. XI. Your orator further shows that *that* he is ignorant
254 whether or not the note herein claimed by complainant, Charles E. Alter, be satisfied; and whether or not the note herein sued for by Andrew K. Brown and Charles Whiting, testamentary executors of Geo. F. Miller, be extinguished; but true it is, your orator avers that he is justly and lawfully entitled to have and receive three-eighths of whatever sum is justly and legally to be set apart and appropriated out of the proceeds of said sale towards the note and mortgage aforesaid, and the judgments and decree therein, in favor of Frank M. Ames, now the property of your orator, Robert M. Walsh.

The premises considered, your orator prays that he may be recognized as the true and only owner of the note, mortgage, judgment, and decree in the suit entitled, Frank M. Ames vs. Margaret D. Allain, wife of Sosthene Allain, and William H. Aymar, No. 6894, of the docket of the United States circuit court for the district of Louisiana, to the extent of three eighths thereof, and, as such owner, entitled to have
255 and receive, out of the proceeds of the property sold herein, his true and just proportion of such proceeds.

May it please your honors to authorize Mrs. Emma Felicie Allain Penis

ton, wife of Fergus Peniston, to defend this suit, her husband being out of the jurisdiction of the court; and grant unto your orators a writ or writs of supœna, to be directed to the said Frank M. Ames, Edward J. Gay, Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, and Mrs. Victoria Elizabeth Allain, William Henry Aymar; Andrew K. Brown, and Charles Whiting, testamentary executors of George F. Miller, and Jack Wharton, United States marshal for the district of Louisiana, commanding them, and each of them, at a certain time, and under a certain penalty, therein to be limited, personally to appear before this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to this hon-
256 orable court shall seem agreeable to equity and good conscience; and that your orator may have such further order and other relief in the premises as the nature of this case may justify and require.

(Signed) LACEY & BUTLER,
Solicitors for Rob't M. Walsh.

Affidavit.

United States circuit court for the district of Louisiana.

FRANK M. AMES, EDWARD J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN, WIFE OF SOSTHENE Allain, and Wm. H. Aymar. } No. 6894.

STATE OF LOUISIANA,
City of New Orleans:

On this 24th day of November, 1877, before me personally appeared Robert Moore Walsh, the complainant in the foregoing bill, and made oath that he has read the above bill subscribed by him, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

(Signed) R. M. WALSH.

257 Sworn to and subscribed before me this 24th Nov., 1877.

(Signed) F. B. VINOT,
U. S. Comm'r.

NOTE.—The act of sale passed before Nicholas Browse Trist, a notary public for the parish of Orleans, on the seventeenth day of June, 1876, referred to in the foregoing intervention of R. M. Walsh, was not filed with said intervention.

Order.

Let the foregoing bill, in the nature of an intervation, be filed.

(Signed) EDWARD C. BILLINGS,
Judge.

NOVEMBER 24th, 1877.

Let Mrs. Emma Felie Allain Peniston, wife of Fergus Peniston, be authorized to defend this suit.

November 24th, 1877.

(Signed) EDWARD C. BILLINGS,
Judge.

Subpœna in chancery to Frank M. Ames.—Issued November 24, 1877.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

258 You are hereby commanded to summon Frank M. Ames, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of January, 1878, then and there to answer a bill in chancery, in the nature of a bill of intervention, filed against him and others, wherein Robert M. Walsh, a citizen of the State of Louisiana, is complainant, and said Frank M. Ames and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of November, in the year of our Lord one thousand eight hundred and seventy-seven, and the 102d year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

259 The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of January, 1868, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received, Nov. 26, 1877, by the U. S. marshal, and after due search and enquiry, the within named Frank M. Ames could not be found in this district.

(Signed) W. G. ELLIOTT,
D'y Marshal.

Su'pœna in chancery to Edward J. Gay.—Issued November 24th, 1877.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Edward J. Gay, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit
260 court to be holden on the first Monday of January, 1878, then and there to answer a bill in chancery, in the nature of a bill of intervention, filed against him and others, wherein Robert M. Walsh, a citizen of the State of Louisiana, is complainant, and said Edward J. Gay and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of November, in the year of our Lord one thousand eight hundred and seventy-seven, and the 102 year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of January, 1878, otherwise the bill may be taken pro confesso.

261 (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received Nov. 26, 1877, by the U. S. marshal, and on the 28th day of Dec., 1877, served a copy within subpœna in chancery by handing the same to him in person in this city.

(Signed) DAN. A. ROSE,
D'y U. S. Marshal.

Subpœna in chancery to Mrs. Emma Felicie Allain Peniston.—Issued Nov. 24, 1877.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of January, 1878, then and there to answer a bill in
262 chancery in the nature of a bill of intervention filed against her and others, wherein Robert M. Walsh, a citizen of the State of Louisiana, is complainant, and said Mrs. Peniston & others are defendants.

Herein fail not and have you then and there this writ with your endorsement thereon, how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of November, in the year of our Lord one thousand eight hundred and seventy-seven, and the 102d year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that she is required to enter her appearance in the clerk's office of the United States circuit court, on or before the first Monday of January, 1878; otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

263 *Marshal's return.*

Received Nov. 26, 1877, by the U. S. Marshal, and on the 4th day of December, 1877, served a copy hereof on Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, by delivering the same to Miss Victoria Elizabeth Allain, an adult person, at the domicile of Mrs. Peniston, Laurel street, between Berlin and Napoleon avenue, and residing therein, the said Mrs. Peniston being absent at the time of service.

New Orleans, Dec. 5, 1877.

(Signed) DAN. A. ROSE,
D'y U. S. Marshal.

Subpœna in chancery to Miss Victoria Elizabeth Allain.—Issued November 24th, 1877.

UNITED STATES OF AMERICA.

The President of the United States to the U. S. marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Miss Victoria Elizabeth Allain, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States
264 of America, at a circuit court to be holden on the first Monday of January, 1878, then and there to answer a bill in chancery, in the nature of a bill of intervention, filed against her and others, wherein Robert M. Walsh, a citizen of the State of Louisiana, is complainant, and said Miss Victoria Elizabeth Allain and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of Nov'r, in the year of our Lord one thousand eight hundred and seventy-seven, and the 102 year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that she is required to enter her appearance in the clerk's office of the United States circuit court,
265 on or before the first Monday of January, 1878, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received Nov. 26, 1877, by the U. S. marshal, and on the 4th day of December, 1877, served a copy hereof on Miss Victoria Elizabeth Allain, within named, by handing the same to her in person, in the city of New Orleans.

(Signed) DAN. A. ROSE,
D'y U. S. Marshal.

Subpœna in chancery to William Henry Aymar.—Issued Nov. 24, 1877.

UNITED STATES OF AMERICA.

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon William Henry Aymar, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of January, 1878, then and
266 there to answer a bill in chancery, in the nature of a bill of intervention, filed against him and others, wherein Robert M. Walsh, a citizen of the State of Louisiana, is complainant, and said William Henry Aymar and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of November, in the year of our Lord one thousand eight hundred and seventy-seven, and the 102d year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday of January, 1878, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

267 *Marshal's return.*

Received Nov. 26, 1877, by the U. S. marshal, and on the 30 day of Dec., 1877, day and year, served a copy within subpœna in chancery by handing the same to W. H. Aymar, esq., in this city, in person.

(Signed) DAN. A. ROSE,
D'y U. S. Marshal.

Subpœna in chancery to Andrew K. Brown.—Issued Nov. 24, 1877.

UNITED STATES OF AMERICA.

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Andrew K. Brown, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of January, 1878, then and there to answer a bill in chancery in the nature of a bill of intervention filed against him and others, wherein Robert M. Walsh, a citizen of the State of Louisiana, is complainant, & said Andrew K. Brown and others
268 are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day of November, in the year of our Lord one thousand eight hundred and seventy-seven, and the 102 year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday of January, 1878, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received Nov. 26, 1877, by the U. S. marshal, and on same day, Nov. 26, 1877, served a copy of within subpœna in chancery by handing same to A. K. Brown, esq., in person, at his office in this city.

(Signed) DAN. A. ROSE,
D'y U. S. Marshal.

269 *Subpœna in chancery to Charles Whiting.—Issued Nov.* 24, 1877.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Charles Whiting, testamentary executor of Gecrge F. Miller, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of January, 1878, then and there to answer a bill in chancery, in the nature of a bill of intervention, filed against him and others, wherein Robert M. Walsh, a citizen of the State of Louisiana, is complainant, and said Chas. Whiting, test'y ex'r, and others, are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 24th day
270 of November, in the year of our Lord one thousand eight hundred and seventy-seven, and the year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of January, 1878. Otherwise, the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received Nov. 26, 1877, by the U. S. marshal, and on the 4th day of Jan., 1878, served a true copy of the within subpœna in chancery on Chas. Whiting, testamentary executor of Geo. F. Miller, through A. K. Brown, his agent, by handing the same to him, the said A. K. Brown, agent, in person, in the city of New Orleans, Chas. Whiting, ex'r, &c., being absent from the city at the time of service. All of which I learned by interrogating the said A. K. Brown.

(S'g'd) W. G. ELLIOTT,
D'y Marshall.

271 *Subpœna in chancery to Jack Wharton, U. S. marshal.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Jack Wharton, United States

marshal for the district of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of January, 1878, then and there to answer a bill in chancery, in the nature of a bill of intervention, filed against him and others, wherein Robert M. Walsh, a citizen of the State of Louisiana, is complainant, and said Jack Wharton, U. S. marshal, &c., and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the
272 Supreme Court of the United States of America, this 24th day of November, in the year of our Lord one thousand eight hundred and seventy-seven, and the 102d year of American Independence.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of January, 1878, otherwise the bill may be taken pro confesso.

(Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received Nov. 26, 1877, by the U. S. marshal, and service accepted for the U. S. marshal.

JACK WHARTON,
(S'g'd) B' EDW. L. WURZBURGER,
D'y M'l.

Interrogatories to Henry P. Redmond, of Galveston, Texas, on behalf of intervenor, Robert M. Walsh.—Filed Dec. 12, 1877.

United States circuit court, district of Louisiana.

373 FRANK M. AMES, ED. J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN & OTHERS, CHAS. E. ALTER, intervenor, and Robt. M. Walsh, intervenor. } #6894.

Interrogatories to be propounded to Henry P. Redmond, of Galveston, Texas, under a commission to be issued in the above-entitled cause, on behalf of Robt. M. Walsh, intervenor.

Interrogatory 1st. Where were you living in May and June, 1874? Did you ever have any transactions with the complainant, Frank M. Ames, or his attorney in fact, E. T. Merrick, esq'r, relative to the purchase of the note and mortgage sued on in the above entitled and numbered cause; if yea, when, and through whom? What arrangement, if any, did you make with said Ames for the purchase of said note and its accessories? What price did you agree to pay for the same? How much, if anything, did you pay for said note and mortgage? Where and from whom, did you receive the money to purchase said note, &c.?

Did you negotiate and transact with said Ames, or his attorney,
274 for said note, and its accessories, for your own account and benefit or for the benefit of some one else; if for some one else, state for whom.

Interrogatory 2d. Did you or not, at any time, transfer and assign all your rights in and to the note & mortgage referred to in the 1st interrogatory; if yea, to whom, when, and for what consideration? In making said transfer, did you or not understand that the same was for the benefit and advantage of your transferee? Please state fully and particularly all you did in the premises, as though you were specially interrogated in relation thereto.

(Signed) LACEY & BUTLER,
Solicitors for Intervenor R. M. Walsh.

Robt. M. Walsh, being duly sworn, doth depose and say that the testimony of Henry P. Redmond, of Galveston, Texas, is material & necessary on behalf of deponent upon the trial of this cause.

(Signed) R. M. WALSH.

Sworn to & subscribed before me, the 12th day of December, 1877.

(Signed) F. B. VINOT, *U. S. Comm'r.*

275 Service of the foregoing interrogatories accepted, and waiving all delays, we decline to cross same.

Dec. 22d, 1877.

(Signed) DAVID N. BARROW,
Att'y for Edward J. Gay.

Notice to cross-interrogatories.—Issued Dec. 12, 1877.

United States circuit court, district of Louisiana.

FRANK M. AMES, E. J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN ET AL. } No. 6894.

To Geo. L. Bright, esqr., att'y for Mrs. Peniston, Mrs. Allain, and Charles E. Alter:

Take notice, that Robert M. Walsh, intervenor, has this day filed interrogatories to Henry P. Redmond, copy whereof accompanies this notice; and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.

Clerk's office, New Orleans, Dec'r 12th, 1877.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

276 *Marshal's return.*

Received, Dec. 12, 1877, by the U. S. marshal, and on the 13th day of Dec., 1877, served a true copy hereof, with copy of interrogations accompanying, on Geo. L. Bright, esqr., by handing the same to him in person, in the city of New Orleans.

(Signed) W. G. ELIOTT,
D'y Marshal.

(Commission for Walsh missing and cannot be found.)

277 *Cross-interrogatories to Henry P. Redmond.*

United States circuit court, district of Louisiana.

FRANK M. AMES, ED. J. GAY, SUBROGATED, *vs.* MARGARET D. ALLAIN & OTHERS. } No. 6894.

Cross-interrogatories to Henry P. Redmond, witness in behalf of Robert M. Walsh:

I. First cross-interrogatory. Did you personally make the transaction with Frank M. Ames or E. T. Merrick; I mean the transaction referred to in the first interrogatory? Were you in New Orleans in May, 1874? Did you authorize any person to make the transaction for you? If yea, who did you authorize? Was the authority in writing? If yea, where can it be found? Where did you get the money with which the cash payment was made? Was it made with your money? From whom did you receive it? Were not Messrs. Lacey & Butler the attorneys of Eyma? If you should say they acted as your attorneys, is it not true that
278 Eyma employed them for you? Did you become responsible to them for the fees? Did you pay them? Have they ever demanded payment from you? Were you not the intimate friend of Aymar? Have you not covered his rights and property with your name? How do you account for the fact that whilst you were his friend, and lent him your name to cover transactions, you were buying a judgment against him? Did you know at the time that the purchase of the judgment had been made in your name? If yea, how did you know it, and when did you know it? Annex the letter that gave you the information. If you should say you made the purchase, how do you account for remaining so long silent after it was made? Did you, on or about the time of the purchase, or at any time afterwards, receive any letters or written information from Eastman, Aymar, or any other person, relative to the purchase? If yea, annex them to your answers.
279 Did Mr. Eastman ever hold your power of attorney? Was he authorized to make any purchase for you? If yea, how was he authorized? Is it not true that Aymar was purchasing for himself, and using you and Eastman for the purpose? If not exactly true, then state what is true relative thereto. Have not claims other than this one in question against Aymar been transferred sometimes to you and sometimes to Eastman? Were not the transfers made by the request of Aymar? Did you, when such transfers were made, pay your own money?

II. Have you ever written a letter to Messrs. Lacey & Butler, atty's, or either of them, relative to the matter at issue; if yea, annex a copy of it, or state why you cannot do so.

III. Have you ever, and especially between May, 1874, and the present time, received any letter from Aymar or Eastman, or any other person, which related in any way to the subject matter of the intervention of Robert M. Walsh, or to the subject of the transfer ot the judgment and claim of Ames against Aymar and others to you? If yea,
280 annex them to your answers, or let the commissioner make a copy of them and annex them to your answers. Have you written any letters in answer to them? If yea, to whom and when; annex copies of your answers to these interrogatories.

IV. Did you ever make any transfer of your rights to Frederick Eastman; if yea, when and where? Was it in writing? State the consid-

eration for which you made the transfer. Was the consideration real? Did you receive it? At whose request did you make the transfer? Was the request made to you in writing? If yea, annex it to your answers. Have you ever received any letters concerning the transfer? If yea, annex them.

V. State all you know tending to show that the purchase of the judgment in favor of Ames was made for the account and benefit of Aymar. Have you stated fully, without concealment or reservation of any kind, all you know that would tend to show that said purchase was really made by Aymar, and not by you?

281 VI. Have you received from any person any letter of instruction referring in any way to this litigation? Annex them to your answers.

Respectfully,
(Signed) GEO. L. BRIGHT,
Solicitor for Miss Allain & others.

P. S.—The commissioner is requested to cause each and every interrogatory to be separately and fully answered.
(Signed) G. L. BRIGHT,
Att'y.

Answer of Mrs. Emma Felicie Allain Peniston, Miss Victoria Elizabeth Allain, and Chas. E. Alter to the bill of intervention of Robert M. Walsh.

United States circuit court for the district of Louisiana.

FRANK M. AMES, EDWARD J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN, WIFE OF LOSTHENE ALLAIN, et als.

Answer of Emma Felicie Allain Peniston, wife of Fergus Peniston, and of Miss Victoria Elizabeth Allain, & Charles E. Alter, to the bill of intervention of Robert M. Walsh.

These defendants, now and at all times hereafter reserving all
282 manner of benefit and advantage to themselves of exception to the manny errors and insufficiencies in said bill contained, for answer thereto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, they each, answering for himself or herself, and not the one for the other, jointly and severally answer and say, that—

1st, 2d, 3d, 4th. They admit what is alleged in the 1st, 2d, 3d, and 4th articles of the bill of intervention of the said Robert M. Walsh.

5th. They deny that on or about the 3d day of June, 1874, Frank M. Ames, being the true and bona fide holder and owner of the note and mortgage and of the judgment described in said bill of intervention, agreed to sell and did sell to one Henry P. Redmond, of New Orleans, the aforesaid note and mortgage and judgment for the price and sum of $8,000, of which $3,000 was then paid by said Redmond to said Ames in ready cash, and the balance of said price, viz, $5,000, said Redmond agreed to pay at a future date.

283 And your respondents allege that the truth is that on or

about the 3d day of June, 1874, Frank M. Ames, being the true and bona fide holder and owner of the note and mortgage and judgment aforesaid, sold it to William H. Aymar, one of the defendants in the judgment, for the price of $8,000, of which amount he paid the said Ames $3,000, and agreed to pay the balance of $5,000 at some future time. Wherefore your respondent charges there is only the amount of $5,000 due for the judgment now held by Edward J. Gay.

6th. To the sixth article of the bill, your respondents say that true it is that the said Frank M. Ames subsequently sold and transferred his right, title, and interest in and to said judgment to Edward J. Gay, but before he made the transfer he fully informed the said Edward J. Gay that he had already sold the said judgment, as aforesaid, for $8,000, and had received $3,000 on account, and the said Ames desired to make these facts appear in the written transfer he made to Gay, but the said Gay,
284 in order to serve his purposes and to conceal the facts, insisted upon a transfer being made to him in such a manner and form as to exclude the facts herein recited, promising at the same time to the said Ames that he would take no advantage of the unconditional and unexplained written transfer made to him, so far as the said Ames is concerned.

7th. Your respondents deny that heretofore, to wit, on or about the day of , 187 , the said Henry P. Redmond sold and transferred unto Frederick Eastman all his right, title, and interest in said note, mortgage, and decree, and that on or about the 14th day of June, 1877, Robert M. Walsh acquired by sale, transfer and conveyance, and for a valid consideration, all the right, title, interest, and claim of Frederic Eastman and Henry P. Redmond in and to the aforesaid note, mortgage and judgment.

And your respondents allege that the truth is that William H. Aymar, the defendant in said judgment, was the true and only purchaser of
285 said judgment as aforesaid; that Frederick Eastman and Henry P. Redmond never had any interest in said judgment, and are individuals who the said Aymar was in the habit of using and did use in the aforesaid transaction to cover his frauds and to protect his property from the pursuit of his creditors; that all that is herein alleged was well known to Edward J. Gay and Robert M. Walsh, the intervenor; that said Walsh is the clerk of Gay, and his instrument in these proceedings; that said Walsh has no interest herein, and is being used by Edward J. Gay, with whom he has combined and confederated to wrongfully take from the proceeds in court the sum of $3,000 and upwards; and that all the allegations made in the bill of said Walsh against the said Edward J. Gay are really made by Gay himself against himself, with a view of recovering the aforesaid sum of $3,000.

8th. Your respondent admits that the said Edward J. Gay, with full knowledge of the facts recited in said bill, and as amended and
286 charged in this answer, pretends to acquire the note, mortgage, and judgment described in the bill.

9th. Your respondent denies that Robert M. Walsh is the true and lawful owner of three-eighths of said note, mortgage, and judgment, or of any part thereof, and that he has any interest whatever therein.

10th. Your respondents admit that the mortgaged property was sold on the 2d September, 1876, for $28,900, which is in the hands of the marshal for distribution.

11th. Your respondents allege that no part of the note and judgment held by Charles E. Alter has been satisfied.

All which matters and things these defendants and respondents are

ready to aver and prove as this court shall direct; and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) EMMA F. PENISTON.
" V. E. ALLAIN.
" CHAS. E. ALTER.

(Signed) GEO. L. BRIGHT,
Solicitor.

287 *Affidavit.*

STATE OF LOUISIANA,
City of New Orleans:

Before me personally appeared Emma Felicie Allain Peniston, wife of Fergus Peniston, and Miss Victoria Elizabeth Allain, and Charles E. Alter, and made oath that they have read the above answer subscribed by them, and know the contents thereof, and that the same is true of their own knowledge except as to the matters which are therein stated to be on information or belief, and that as to those matters they believe it to be true.

(Signed) EMMA F. PENISTON.
V. E. ALLAIN.

Sworn to and subscribed before me this 27th day of Dec'r, 1877.
(Signed) F. B. VINOT,
D'y Clerk.

(Signed) CHAS. E. ALTER.

Sworn to and subscribed before me this 28th Dec., 1877.
(Signed) F. B. VINOT,
D'y Clerk.

Extract from chancery order book.—December 28, 1877.

288 FRANK M. AMES, EDWARD J. GAY, subrogated, *vs.* MARGARET D. ALLAIN ET AL. } 6894.

Emma Felicie Allain Peniston, wife of Fergus Peniston, Miss Victoria Elizabeth Allain, and Charles E. Alter have this day by their solicitor, Geo. L. Bright, filed their answer to the bill of intervention of Robert M. Walsh.

Notice to cross-interrogatories.—Issued December 28th, 1877.

United States circuit court, district of Louisiana.

FRANK M. AMES, E. J. GAY, SUBROGATED, *vs.* MARGARET D. ALLAIN ET AL. } 6894.

To H. D. Ogden and Chas. G. Ogden, attorneys:

Take notice that R. M. Walsh, intervenor, has filed interrogatories to Henry P. Redmond, copy whereof accompanies this notice, and that you may, if you think proper, put such cross-interrogatories as are re-

quisite and fit, and file the same in this court within ten days
289 from the service hereof.

Clerk's office, New Orleans, Dec. 28, 1877.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received, Dec. 28, 1877, by the U. S. marshal, and on the same day served a true copy of the within notice with accompanying interrogatories on H. G. Ogden & C. G. Ogden, esqrs., by handing the same to C. G. Ogden, esq., in person, in the city of New Orleans.

(Signed) W. G. ELLIOTT,
D'y Marshal.

Extract from minutes, Jan'y 4, 1878.

FRANK M. AMES, EDWARD J. GAY, SUBROGEE,
vs.
MARGARET D. ALLAIN, WIFE, &C. } 6894.

On motion of Geo. L. Bright, solicitor for Chas. E. Alter, Mrs. Peniston, and Mrs. Allain, it is ordered that this cause be fixed for trial on Monday, 21st January, 1878, at 11 a. m., and that Edward J. Gay, or his attorney, David N. Barrow, Lacey & Butler, attorneys
290 for Robert M. Walsh, H. D. & C. G. Ogden, attorneys for Andrew K. Brown and Charles Whiting, testamentary executors, be notified thereof.

Extract from chancery order book, January 7, 1878.

FRANK M. AMES, E. J. GAY, SUBROGATED,
vs.
M. D. ALLAIN, ET ALS. } 6894.

Charles Whiting and Andrew K. Brown, testamentary executors of George F. Miller, have this day entered their appearance to the bill of intervention of Robert M. Walsh, through their solicitors, H. D. Ogden and Chas. G. Ogden.

(Commission for Walsh missing and cannot be found.)

291, 292 *Rule to read testimony.—Filed January* 17, 1878.

U. S. circuit court, district of Louisiana.

FRANK M. AMES, ED. J. GAY, SUBROGATED,
vs.
Mrs. M. D. ALLAIN ET ALS. } No. 6894.

On motion of H. D. Ogden & Chas. G. Ogden, solicitors for the Grand Lake Coal Company and for Andrew K. Brown and Charles Whiting, testamentary executors of Geo. F. Miller, and on suggesting that by virtue of a commission issued by this hon. court, the testimony of Henry P. Redmond has been taken on behalf of your movers in the above-entitled and numbered cause, by Henry J. Labatt, U. S. commissioner, at

Galveston, Texas; that said commission and testimony have been duly returned to this hon. court, and that your movers desire to use the same as evidence upon the trial of this cause:

It is ordered that Chas. E. Alter, Mrs. Emma F. Allain, wife of
293 Fergus Peniston, Miss Victoria E. Allain, Edward J. Gay, Wm. H. Aymar, and Robert M. Walsh show cause, on Saturday, Jan'y 19, 1878, at 11 a. m., why the testimony of Henry P. Redmond, taken under the commission herein issued, on behalf of the Grand Lake Coal Company & Miller's executors, to Henry J. Labatt, commissioner at Galveston, Texas, should not be received and read as evidence upon the trial of this cause.

Service accepted for Chs. E. Alter, Mrs. Peniston, and Miss Allain.
Jan'y 15, '78.
(S'g'd) G. L. BRIGHT, *Att'y.*

Service accepted.
Jan'y 16, '78.
(S'g'd) LACEY & BUTLER.
Att'ys for Walsh.

Service accepted for E. J. Gay.
Jan'y 16, 1878.
(S'g'd) BARROW & POPE.

Extract from minutes, Feb'y 4, 1878.

FRANK M. AMES, E. J. GAY, SUBROGATED, *vs.* M. D. ALLAIN ET ALS. } 6894.

On motion of Geo. L. Bright, solicitor for Chas. E. Alter & al.,
Ordered, That the cause be set for trial on Thursday, 28th in-
294 stant, at 11 o'clock a. m., and that all parties in interest be notified thereof.

Extract from minutes, Feb'y 11, 1878.

FRANK M. AMES, ED. J. GAY, SUBROGATED, *vs.* MARGARET D. ALLAIN & OTHERS. } 6894.

On motion of Geo. L. Bright, solicitor for Chas. E. Alter & others, and on showing to the court that C. W. Colton, appointed special examiner, is sick and unable to act as such, it is ordered that F. A. Woolfley be appointed in his place.

Extract from minutes.—Feb'y 21, 1878.

FRANK M. AMES, E. J. GAY, SUBROGATED, *vs.* Mrs. M. D. ALLAIN ET AL. } 6894.

On motion of H. D. Ogden and Chas. G. Ogden, solicitors for the Grand Lake Coal Company and the executors of Miller, it is ordered that Chas. E. Alter, Mrs. Emma F. Allain, wife of Fergus Peniston, Miss
Victoria E. Allain, Edward J. Gay, Wm. H. Aymar, and Robert
295 M. Walsh, show cause on Saturday, February 23, 1878, at 11

a. m., why the testimony of Henry P. Redmond, taken by virtue of a commission issued herein on behalf of said movers, to Hy. J. Labatt, commissioner, at Galveston, Texas, should not be read in evidence upon the trial of this cause.

Extract from minutes.—February 23, 1878.

FRANK M. AMES, E. J. GAY, SUBROGATED,
vs.
Mrs. M. D. ALLAIN ET ALS. } 6894.

The rule taken on the 21st instant having been submitted by consent of counsel, it is ordered that said rule be made absolute and that the deposition of the witness, Redmond, taken under commission, be read in evidence on the trial of the cause.

Continuance of case.—Extract from minutes February 28, 1878.

F. M. AMES, E. J. GAY, SUBROGATED,
vs.
Mrs. M. D. ALLAIN ET AL. } 6894.

For want of time it is ordered that this cause be reassigned for trial on 22d April, 1878, at 11 o'clock a. m., and that all parties in interest be notified.

296 *Extract from minutes.—April 22d*, 1878.

FRANK M. AMES
vs.
M. D. ALLAIN ET AL. } 6894.

For want of time it is agreed by counsel to continue the case till the 23d May, 1878, at 11 a. m.

Extract from minutes.—May 23, 1878.

FRANK M. AMES
vs.
MARGARET D. ALLAIN ET AL. } 6894.

By consent of counsel the cause is, for want of time, continued to the 30th instant, at 9 a. m.

Extract from minutes.—May 31, 1878.

FRANK M. AMES
vs.
MARGARET D. ALLAIN ET AL. } 6894.

By consent of counsel the cause is assigned for trial on June 6th, 1878, at 9 a. m.

Hearing and submission of cause.—Extract from the minutes June 6, 1878.

FRANK M. AMES
vs.
Mrs. MARGARET D. ALLAIN ET ALS. } 6894.

This cause came on to be heard on the pleadings, exhibits, proofs, and other proceedings in the cause, and having been argued by counsel, the court took time to consider, and allowed counsel 5 days to submit briefs.

297 *Note of evidence.—Filed June 6th, 1878.*

Alter offers testimony, R. M. Walsh. (See page 299.)
Transcript 4383. 6th dist. court. (See page 311.)
Exhibit B, sale by Merrill to Allain, 3d July, '69. (See page 18.)
Certificate recorder parish West Baton Rouge. (See page 528.)
Certificate recorder parish Iberville. (See page 521.)
Sale of note, Exhibit C. (See page 26.)
Record, Alter vs. Allain, 7415, 5th court. (P'ge 369.)
Act 7th July, '69, Exhibit D, answer to intervention of Charles E. Alter. (See page . Error.)
Testimony E. T. Merrick, page 382.
E. J. Gay, " 416.
F. N. Butler, page 417, 444.
T. H. Kennedy, page 437.
Thomas S. Elder, page 441.
F. M. Ames, page .
Frederick Eastman, 469.
Chas. E. Alter, recalled, page 491, 502.
Receipt Lacey and Butler to sh'ff in suit of Mercer vs. Eastman & Eymer. (See page .)
298 For Mrs. Peniston and Allain the following is offered:
Sale of Mrs. Allain to W. H. Aymar, 9th May, '71. (See page 506.)
14 notes made by Aymar, 517. (See page .)
Cert. rec. mort. Iberville, & W. Baton Rouge. (See page 528.)
Cert. from Iberville, 26th, 1876. (See page 521.)
E. J. Gay offered doc'ts E & F, 533 & 535.
Executors of Miller offer doc'ts G & H, I. (See pages 541, 550, 558.)
Note K. (See page 568.)
Also statement of H. D. Ogden. (See page 569.)
Suit parish St. James, L. (See page 572.)
Pledge M. (See page 587.)
Testimony, Aymar, 589. Eastman and Redmond taken under commission. (Page 588.)
C. E. Alter offers test'y of A. Hero, jr. (603.)
Gay offers test'y of Dufour. (See page 597.)
Miller's executors offer cert. showing recordation of sale.
Gay offered marshal's sale. (See marshal's return, page 56.)

299 *Testimony on behalf of Charles E. Alter.*

U. S. circuit c't.

F. M. AMES, E. J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN ET ALS. } No. 6894.

Testimony taken on January 3d, 1878, on behalf of Charles E. Alter, under written agreement between counsel. Reported by C. W. Colton, phonographer.

ROBERT MOORE WALSH sworn and examined in behalf of Alter.

By Mr. BRIGHT:

Q. Are you a clerk of Edward J. Gay?

WITNESS. At present?

Mr. BRIGHT. Yes, sir.

A. No, sir; I am in his employ as superintendent of refinery.

Q. How long have you been in his employ?

A. Since November, 1874.

300 Q. Are you acquainted with Frederick Eastman?

A. Well, I am not intimately acquainted with him.

Q. Have you ever had any conversation with him?

A. I would like, before answering that question, to consult Mr. Butler.

Mr. BUTLER. You will have to answer all questions put to you that are pertinent to this issue.

WITNESS. The reason I do not answer that question is that I have the names of Redmond and Eastman confounded.

Q. Do you know Mr. Redmond?

A. No, sir.

Q. Have you ever negotiated anything with Mr. Eastman?

A. I paid Mr. Eastman five hundred dollars cash in hand for a mortgage note.

Q. What mortgage note?

A. Well, it was a mortgage note that he was transferring to me or subrogating to me in consideration of the sum of five hundred dollars.

Q. Describe the mortgage note.

A. Well, I forget the reading of it.

Q. By whom was it made?

301 A. I am unprepared to answer the questions. I could answer them directly if I had sufficient time.

Q. For how much was the note?

A. I do not remember the amount.

Q. Was the note secured in any way?

A. My recollection is that it bore upon a piece of property in West Baton Rouge Parish.

Q. What was the name of the property?

A. The Australia plantation.

Q. Was the note due or past due?

A. If I remember right it was past due.

Q. When was it past due?

A. I do not exactly remember the date.

Q. You said you paid five hundred dollars; to whom?

A. To Richard Eastman.

Q. Did you pay it to him individually?

A. Individually; yes, sir.
Q. You handed it into his hands?
A. Into his hands; yes, sir.
Q. Was it by check or with money that you paid him?
A. Money; United States Treasury notes or national bank notes.
Q. Where did you get the money?
A. Well, I had it in my possession and handed it to him.
Q. How did it come into your possession?
A. I received it from the cashier of Edward J. Gay and Company.
302 Q. For what purpose did you receive it?
A. I received it in order to facilitate my purchase of the note from Eastman. I might add that I asked for five hundred dollars. A check was handed to me, and I had it cashed and presented the money to Mr. Eastman.
Q. Now, tell us fully what led you to the purchase of this note. Explain to us how it began, what gave you the idea, and what was your purpose.
A. I was simply requested——
Q. State by whom.
A. To make a purchase——
Q. State by whom you were requested, in order to save my asking other questions.
A. I was requested by Edward J. Gay to make a purchase of that note. I did so in the manner described there in my testimony. It was a cash transaction.
Q. Who negotiated for it, Edward J. Gay or you?
A. Well, as far as negotiating for it is concerned, I know of no further negotiations than the fact that when Mr. Eastman had
303 drawn up or subrogated or had the act passed subrogating the note to me. I was then prepared and did pay him five hundred dollars for the note.
Q. Did you go to Mr. Eastman and apply to him to sell you this note?
A. No, sir; on the contrary, he came to the office.
Q. Whose office?
A. To the office where I was employed.
Q. Of Edward J. Gay?
A. Yes, sir, to the office of my employers.
Q. Who traded with him in that office, you or Edward J. Gay?
A. Well, the trade, as I understand it, began and ended by my receiving from him an act of subrogation, and in my paying him five hundred dollars for the note.
Q. You knew nothing about that note until that moment?
A. Well, nothing definite.
Q. Mr. Walsh, was it your own five hundred dollars that paid for this note?
A. It was not.
304 Q. Was it not the five hundred dollars of Edward J. Gay?
A. I do not know whether it was Edward J. Gay's personal property or that of the firm of Edward J. Gay and Company.
Q. Did Mr. Gay state to you the object he had in making this purchase?
A. No, sir.
Q. Did you inquire?
A. I did not.
Q. Is it not true that you are only a party interposed in this matter for Edward J. Gay?

A. I believe it to be so.

Cross-examined by Mr. BUTLER:

Q. I understand you to say, Mr. Walsh, that at the request of Mr. Gay you purchased this note?

A. Yes, sir.

Q. It was done at the request of Mr. Gay?

A. At the request of Mr. Gay.

Q. Mr. Gay put you in funds for that purpose. Now, I want to know whether or not, at the time he loaned you this money for the pur-

305 pose of acquiring this note, it was not understood that that note was your property?

A. It was understood that it was my property when I paid for it—that is, the transaction from beginning to the end was one simply between Mr. Eastman and myself. I was placed in funds by Edward J. Gay, or by the firm of Edward J. Gay and Company.

Q. Who is the owner of that note to-day?

A. I consider that I am.

Q. You consider you are the owner of that note to day?

A. Yes, sir.

Q. It is true that you acquired it at the request of Mr. Gay, and that Mr. Gay loaned you the money, but was it not distinctly understood that it was to be your property?

A. My understanding was simply that the note was presented to me for purchase, and I was to purchase it; that the subrogation was to be made to me, and that I became virtually and bona fide the owner of the note. What I did with it afterwards was a second consideration. I might have retransferred it to any one else a half an hour afterwards.

306 Q. You have a right to-day to retransfer the note to any one else you see fit to transfer it to?

A. Yes, sir. There is no one else now that I believe is more virtually the possessor of that note than I am.

Q. Then I understand you to say that you acquired the note because Edward J. Gay requested you to do so?

A. Yes, sir.

Q. But having acquired it, you acquired it as your own, and not as his property? I want you to state exactly what the facts are.

A. I want to ask you, so as to be put in the right position to testify in the matter, and to make a very simple——

Mr. BUTLER. You are in the right position to tell the truth always. That is the way I understood the case to be at the time you brought it to me. I understood that the note was yours, and that you acquired it at the request of Mr. Gay. I certainly understood that to be the fact. Now, I want to know whether it is the fact or not.

307 A. I consider that I am the possessor of that note.

Q. I ask you if you are the owner of that note?

A. Yes, sir.

Q. You consider that you are the owner of that note?

A. Yes, sir.

Q. And that you were so at the time you filed the intervention in this suit?

A. Yes, sir; just as I am to-day.

Q. You have stated to me that you considered you were the owner of that note. Now, I want to know what you meant by saying, in answer to Mr. Bright's question, that you were merely a party interposed?

A. Well, I would like, before going further, to review the testimony that has been written there.

The stenographer here read to the witness the following question and answer on the direct examination: "Is it not true that you are only a party interposed in this matter for Edward J. Gay?—A. I believe it to be so."

Q. What do you mean by that statement?

308 A. I meant by that statement that I became the possessor of the note at the request of Mr. Gay. He may have had his own reasons and objects in view when he made that request of me.

By Mr. BRIGHT:

Q. Was your transfer in writing?

A. Yes, sir.

Q. Have you ever seen the note you bought?

A. I think I have. I think I saw it on the date that I bought it, or the date that Mr. Eastman received the compensation from me.

Q. Are you sure of it?

A. I am not certain as to the identity of the note.

Q. Who wrote the transfer?

A. I think a notary did it.

Q. Did you go to a notary for that purpose?

A. No, sir; I did not. He brought the transfer, if I remember right, in writing. It was a written act of transfer. He brought it to the office at the time he received the five hundred dollars from me.

Q. What notary was it? What was his name?

309 A. I do not know. It was Mr. Eastman that brought it. It came into the office about that time, whether he brought it in his hands or not. There was an act of transfer, and after that had been executed I paid him the five hundred dollars. Whether it was before a notary, or a simple act of transfer, I do not remember.

Q. Have you got it?

A. I have not immediate possession of it; I can produce it.

Q. Who has it?

A. It is filed in the office with papers of mine and of the firm to'. I do not know where to place my hands on it now.

Q. In whose office?

A. In the office of my employers.

Q. Edward J. Gay?

A. Edward J. Gay and Company.

Q. Did not Edward J. Gay take possession of it at the time?

A. No, sir; he did not, that I know of, take immediate possession of it.

Q. Did you carry it off?

A. No, sir; I had no occasion to do so. My own papers were in the same office.

Q. Are you a man of means?

310 A. I am not.

Q. Are you in the habit of speculating in claims of this kind?

A. Very seldom.

Q. Has Mr. Gay kept the amount out of your wages?

A. He has not.

Q. Have you ever paid him back?

A. I have not.

NEW ORLEANS, *January 3d*, 1878.

Notice of the taking of the foregoing testimony was duly served upon

F. N. Butler, esq., personally; upon H. D. Ogden, esq., by leaving the same at his office on Camp st., near Canal street; and upon Edward J. Gay, esq., by leaving the same at his sugar refinery, on the corner of North Peter and Levee streets.

(Signed) C. W. COLTON,
Phonographer.

311 *Transcript No. 4383, sixth dist. court, parish of Orleans. Offered in evidence by Chas. E. Alter.*

STATE OF LOUISIANA.

Sixth district court for the parish of Orleans.

W. N. MERCER *vs.* F. EASTMAN ET ALS. } No. 4383.

Petition.—Filed February 20th, 1873.

To the hon. the judge of the sixth district court for the parish of Orleans

The petition of William N. Mercer, who resides in this city, respectfully shows, that he is the holder and owner of three several promissory notes, drawn by Frederick Eastman to the order of and endorsed by himself, also endorsed by William H. Aymar, both residing in this city, dated at New Orleans, 29th January, 1, 1872; one for thirty-five hundred dollars ($3,500), payable on 1st January, 1873; another for a
312 like sum, payable on 1st March, 1873; and the third for seven thousand dollars ($7,000), payable on 1st June, 1873; all being interest at the rate of eight per cent. per annum from maturity; that said notes were given originally by said Eastman to said Aymar for one year's rent of property leased by the latter to the former, by act passed before Theo. Guyol, notary public, on 29th January, 1872, and which said notes are identified by the paraph of said notary, and by which said Eastman bound himself to pay attorneys' fees at five per cent. on any of said notes that might be sued on; and that said Aymar, to secure the payment of said notes, and of all interest thereon, pledged to petitioner, the 9th February, 1872, both by delivery and by act, under private signature, with his endorsement thereon, a certain promissory note for the sum of eleven thousand dollars, dated 3rd July, 1869, and payable one year after date, drawn by Mrs. M. D. Allain, duly authorized by her husband, S. Allain, which note is secured by mortgage as per
313 act before G. Gottschalk, notary public, passed on 3rd July, 1869, with which it is identified by the paraph of said notary, and bears interest at (6 %) six per cent. from date until paid * * * maturity, and thereafter at 8 per cent. until paid; and that said Aymar waived demand, protest, and notice of protest on said firstly described note, as the whole will more particularly appear by said firstly described note, which is annexed as part of the petition, and by the other notes and documents above referred to, or duly certified copies thereof to be produced at the trial.

Petitioner further avers that said Eastman and Aymar, although thereunto amicably requested, neglect to pay the amount of the promissory note firstly above described due since January last and hereto annexed, viz, three thousand five hundred dollars, for which they are indebted to petitioner in solido, with 8 % interest from that date.

Petitioner therefore prays that said Frederick Eastman and William H. Aymar be cited to appear and answer this petition, and that,
314 after due proceedings, they be condemned to pay in solido to him said sum of three hundred dollars, with eight per cent. interest from maturity, viz, 4th January, 1873, until paid, with five per cent. thereon attorneys' fees and costs of suit. Petitioner further prays that his right of pledge aforesaid to secure not only the note now due but the two notes to become due be recognized and confirmed, and said pledged note ordered to be sold for cash, and the proceeds applied to the payment of petitioner's claim, as far as may be, and petitioner prays for general relief; and that said W. H. Aymar and Frederick Eastman be ordered to answer the subjoined interrogatory on facts and articles on oath, in open court, on a day to be fixed by the court and duly notified to them.

T. H. KENNEDY, *Att'y.*

Interrogatory. Are not all the facts alleged in the foregoing petition true? If not, which of them are untrue?

Order of court.

315 Let the defendants be ordered to answer the within interrogatories on facts and articles within the legal delay and according to law.
New Orleans, Feb'y 20th, 1873.

A. SAUCIER, *Judg*

Note D.—Filed February 20th, 1873.

$3,500.] NEW ORLEANS, 29*th Jan'y*, 1872.

On the first January, 1873, after date, I promise to pay to the order of myself thirty-five hundred dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

FRED EASTMAN.

Paraphed by notary, ne varietur.
In conformity with an act of case, duly stamped, passed before me this 29th January, 1872.

THEO. GUYOL, *Notary.*

Note endorsed: Fred Eastman, William H. Aymar.

316 (Waiver written on reverse of note:)
I hereby waive demand, protest, and notice of protest of the within note.
New Orleans, Jan'y 4th, 1873.

WILLIAM H. AYMAR.

Citation.—Issued February 21st, 1873.

STATE OF LOUISIANA.

Sixth district court for the parish of Orleans, in the city of New Orleans.

W. N. MERCER *vs.* F. EASTMAN & ALS. } No. 4383.

Mr. F. EASTMAN, *New Orleans:*

You are hereby summoned to comply with the demand contained in

the petition and interrogatories on facts and articles of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district court for the parish of Orleans in ten days after the service hereof.

Witness the honorable Arthur Saucier, judge of the said court, the 21st day of February, in the year of our Lord 1873.

317 JOHN O'HEARN,
Deputy Clerk.

Court-house opposite Jackson Square, corner Chartres and St. Anthony's alley, upstairs.

Sheriff's return.

Received Feb'y 21st, 1873, and on the 26th day of February, 1873 served a true copy of within citation and accompanying interrogatories on facts and articles and petition on F. Eastman, defendant herein, in person.

Returned same day.

BEN. C. MIRE,
D'y Sh'ff.

Sh'ff's fees, $2.

Citation.—Issued Feb'y 21st, 1873.

STATE OF LOUISIANA:

Sixth district court for the parish of Orleans, in the city of New Orleans

W. N. MERCER
vs.
F. EASTMAN & ALS. } No. 4383.

Mr. W. H. AYMAR, *New Orleans:*

318 You are hereby summoned to comply with the demand contained in the petition and interrogatories on facts and articles of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district court for the parish of Orleans, in ten days after the service hereof.

Witness the honorable Arthur Saucier, judge of the said court, the 21st day of February, in the year of our Lord, 1873.

JNO. O'HEARN,
Deputy Clerk.

Sheriff's return.

Received Febr'y 21st, 1873, and on the 24th day of February, 1873. served a true copy of within citation and accompanying petition and interrogatories on facts and articles on W. H. Aymar, at his domicil, No. 159 Jackson street, by leaving the same in the hands of Josephine Shaw, a person apparently over 14 years of age, living and residing at said domicil; said W. H. Aymar, being absent from home at time of said service. All of which facts I ascertained by interrogating said
319 Josephine Shaw.

Returned same day.

BEN. C. MIRE,
D'y Sh'ff.

Sh'ff's fees, $2.00.

Supplemental petition.—Filed March 7th, 1873.

To the hon. the judge of the sixth district court for the parish of Orleans:

The supplemental petition of William N. Mercer, plaintiff herein, filed with leave of the court, respectfully shows:

That the note for three thousand five hundred dollars maturing on the 4th inst. (March, 1873) given by the drawer thereof, Frederick Eastman, to William H. Aymar for a portion of the rent of the property leased by said Aymar to said Eastman, and secured by pledge, as the whole is more fully set forth in the original petition, was on the day of its maturity aforesaid duly protested for non-payment, after due demand and refusal, and that due notice thereof was given to said Aymar, the endorser, as will appear by the said note and the protest
320 thereof and notary's certificate of notice which are annexed as part of this petition; and that by reason of the premises the said Eastman and Aymar are indebted in solido to petitioner in the further sum of three thousand five hundred dollars, with eight per cent. interest thereon from 4th March, 1873, and five dollars costs of protest; and that said Eastman is further indebted to petitioner in the sum of one hundred and seventy five dollars attorneys' fees, at the rate of five per cent. on the amount of said note as stipulated in the act of lease of 29th January, 1872, referred to in the original petition.

Wherefore petitioner, reiterating all the allegations of the original petition, prays that the said Frederick Eastman and William H. Aymar may be cited to appear and answer this supplemental petition, and that after due proceedings they be condemned in solido to pay to petitioner over and above the amount for which judgment is prayed for in the original petition, the further sum of three thousand five hundred dollars, with eight per cent. interest thereon from 4th March, 1873, one
321 hundred and seventy-five dollars costs of protest and costs of suit; and in all other respects petitioner prays for judgment as prayed for in the original petition, and especially that the right of pledge be recognized, and that the pledged note be ordered to be sold for cash and the proceeds applied to the payment of the rent notes aforesaid as far as they may go, and for general relief.

T. H. KENNEDY, *Att'y.*

Order of court.

Let this supplemental petition be filed.
New Orleans, 7th March, 1873.

A. SAUCIER, *Judge.*

Note E, annexed as part of supplemental petition.—Filed March 7th, 1873.

$3,500.] NEW ORLEANS, *29th Jan'y*, 1872.

On the first March, 1873, after date promise to pay to the
322 order of myself thirty-five hundred dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

FRED. EASTMAN.

Note paraphed by notary, ne varietur.
In conformity with an act of lease duly stamped passed before me this 29th January, 1872.

THEO. GUYOL.

(Note endorsed:) Fred. Eastman, William H. Aymar.

Protest F.—Filed March 7th, 1873.

STATE OF LOUISIANA:

By this public instrument of protest, be it known that on this fourth day of March, in the year one thousand eight hundred and seventy-three, at the request of the cashier of, and holder for the Citizens' Bank of Louisiana, of the original note whereof a true copy is on the reverse hereof written, I, Felix Grima, a notary public in and for the city
323 and parish of New Orleans, State of Louisiana, duly commissioned and sworn, by my deputy William A. Patterson presented the said note to Mr. H. B. Redmond, a clerk of Mr. Fred. Eastman, the maker, at the Merchants' Cotton Press in this city, his, the said maker's, place of business, he not being then in, and demanded payment thereof, and was answered by the said clerk that said note could not be paid; moreover, left by my said deputy with the said clerk a written card addressed to said maker, stating the object of my call, which card, at the close of business hours, remained unanswered.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of said note, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said note.

324 Thus done and protested in the presence of Charles G. Andry and William A. Patterson, both of this city, witnesses, who have signed with me, the notary.

In testimony whereof I grant these presents, under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

FX. GRIMA,
Notary Public.

CHAS. G. ANDRY.
WM. A. PATTERSON.

Copy of note, written on reverse of protest.

$3,500.] NEW ORLEANS,
29 *Jan'y*, 1872.

On the first of March, 1873, after date, promise to pay to the order of myself, thirty-five hundred $\frac{}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

FRED. EASTMAN.

(Endorsed:) Fred. Eastman, William H. Aymar, W. Newton Mercer.

(Across the face:)
Ne varietur. In conformity with an act of lease duly stamped passed before me this 29th January, 1872.

THEO. GUYOL, *N. P.*

325 *Notary's certificate of notice of protest.*

I, the undersigned notary, do hereby certify that the parties to the note, whereof a true copy is afore written, have been duly notified of the protest thereof, by letters to them, by me written and addressed, dated

on the day of said protest and served on them respectively in the manner following, viz:

By leaving the notice for William H. Aymar, endorser, under the door of his office at No. 3, Carondelet street, in this city, the same being closed and the notice for W. Newton Mercer, endorser, to himself at his residence in this city, the whole by my deputy, Charles G. Andry, on the day below written.

In faith whereof I have hereunto signed my name together with Charles G. Andry and William A. Patterson, witnesses, at New Orleans, this fifth day of March, one thousand eight hundred and seventy-three.

(Original signed) F'X GRIMA,
Not. Pub.

CHAS. G. ANDRY.
WILL. A. PATTERSON.

326 A true copy of the original extant for reference among the records of my office.

New Orleans, March 6th, 1873.

[SEAL.] F'X GRIMA,
Not. Pub.

Citation.—Issued March 8th, 1873.

STATE OF LOUISIANA:

Sixth district court for the parish of Orleans, in the city of New Orleans.

WM. N. MERCER
vs.
F. EASTMAN ET ALS. } No. 4383.

Mr. WILLIAM H. AYMAR:

You are hereby summoned to comply with the demand contained in the supplemental petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of for the sixth district court for the parish of Orleans, in ten days after the service hereof.

Witness the honorable Arthur Sancier, judge of the said court,
327 the 8th day of March, in the year of our Lord 1873.

JOHN O'HEARN,
Deputy Clerk.

Sheriff's return.

Received March 8th, 1873, and on the 10th day of March, 1873, served a true copy of within citation and accompanying supplemental petition on Wm. H. Aymar, defendant herein, at his domicil, No. 159, Jackson street, by leaving same in the hands of B. F. Milliken, a person apparently over 14 years of age, living and residing at said domicil, said Wm. H. Aymar, being absent from home at time of said service, all of which facts I ascertained by interrogating said B. F. Milliken.

Returned same day.

BEN. C. MIRE, *D'y Sh'ff.*

Sh'ff's fees, $2.

Citation.—Issued March 8th, 1873.

STATE OF LOUISIANA:

Sixth district court for the parish of Orleans, in the city of New Orleans

328 WM. N. MERCER *vs.* F. EASTMAN ET ALS. } No. 4383.

Mr. F. EASTMAN:

You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district court for the parish of Orleans, in ten days after the service thereof.

Witness the honorable Arthur Sancier, judge of the said court, the 8th day of March, in the year of our Lord 1873.

JOHN O'HEARN,
Deputy Clerk.

Sheriff's return.

Received March 8th, 1873, and on the 10th day of March, 1873, served a true copy of within citation and accompanying supplemental petition on F. Eastman, defendant herein, in person.

Returned same day.

BEN. C. MIRE,
329 *D'y Sh'ff.*

Sh'ff's fees, $2.00.

Motion to fix day to answer interrogatories.—Filed 17th March, 1873.

WM. N. MERCER *vs.* F. EASTMAN ET AL. } No. 4383.

On motion of T. H. Kennedy, of counsel for plaintiff, it is ordered that Saturday, 22nd inst., at 11 o'clock a. m., be fixed as the day and hour for answering the interrogatories on facts and articles accompanying the original petition herein, that the defendant, F. Eastman, and W. H. Aymar have notice *and* on them accordingly, and that they do on the day and at the hour aforesaid answer said interrogatories on oaths in open court.

Notice of time to answer interrogatories.—Issued March 18th, 1873

STATE OF LOUISIANA:

Sixth district court for the parish of Orleans.

330 W. N. MERCER *vs.* F. EASTMAN ET AL. } No. 4383.

To Messrs. F. EASTMAN and W. H. AYMAR:

You are hereby notified that the answering of interrogatories on facts

and articles by you in the above-entitled case is fixed for Saturday, the 22nd day of March, 1873, at 11 o'clock a. m.

GASP. JAMES,
Deputy Clerk.

Sheriff's return.

Received March 18th, 1873, and on the 19th day of March, 1873, served a true copy of within notice of time to answer interrogatories on F. Eastman and W. H. Aymar herein in person.
Returned same day.

BEN C. MIRE,
D'y Sh'ff.

Sh'ff's fee, $1.

Default.—Extract from the minutes.

FRIDAY, 21*st March*, 1873.

Present the honorable A. Saucier, judge.

331 W. N. MERCER *vs.* F. EASTMAN ET AL. } No. 4383.

On motion of T. H. Kennedy, attorney for the plaintiff in this cause, upon showing to the court that the defendants in this cause have failed to answer plaintiff's original and supplemental petition herein, though duly cited, it is ordered that judgment by default be entered against them.

Order taking interrogatories as confessed.—Extract from the minutes.

SATURDAY, 22*d March*, 1873.

Present, the honorable A. Saucier, judge.

W. N. MERCER *vs.* F. EASTMAN ET AL. } No. 4383.

This cause came up this day on the order to defendants to answer interrogatories—present, T. H. Kennedy, esq., for plaintiff—when, after hearing pleadings, and the defendants failing to appear, it is ordered and decreed that the interrogatories on facts and articles herein
332 propounded to defendants T. Eastman and W. H. Aymar be taken for confirmed.

Motion.—Filed and entered on minutes 25th March, 1873.

Sixth district court for the parish of Orleans.

W. N. MERCER *vs.* F. EASTMAN & ALS. } No. 4383.

On motion of plaintiff, by his counsel, T. H. Kennedy, showing to the court that the defendants F. Eastman and W. H. Aymar failed to ap-

pear in open court on the 22d instant and answer the interrogatories on facts and articles accompanying the original petition herein, as ordered by the court, it is ordered that said interrogatories be and they are hereby taken for confessed by and against both said defendants.

Note of evidence.—Filed 27th March, 1873.

6th district court.

W. N. MERCER
vs.
F. EASTMAN ET AL. } No. 4383.

The note of evidence on confirmation of default.

333 Judge T. H. Kennedy for plaintiff.

Judge Kennedy offered in evidence the two notes annexed to the petition, marked D and E, for $3,500 each; also the waiver of protest on note marked D; also protest marked F, with accompanying certificate of protest; also note for $7,000.00 described in the petition marked D D; also note for $11,000.00 (pledged) marked A B, copy of said note being made and the original withdrawn.

Notes marked D and E, for $3,500 each, annexed to the petition.—Offered in evidence March 27th, 1873.

Transcribed. See pages 5 and 12.

Waiver of protest on note marked D.—Offered in evidence March 27th, 1873.

Transcribed. See page 6.

Protest marked F.—Offered in evidence March 27th, 1873.

Transcribed. See page 13.

334 *Certificate of protest accompanying protest marked F.—Offered in evidence March 27th*, 1873.

Transcribed. See page 16.

Note for $7,000.00, described in the petition marked D D.—Offered in evidence March 27th, 1873.

Copy filed March 27th, 1873 (original withdrawn).

$7,000.] NEW ORLEANS, 29*th Jan'y*, 1872.

On the first of June, 1873, after date, I promise to pay to the order of myself seven thousand $\frac{}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) FRED. EASTMAN.

No. . Due.

(Indorsement:) No. 4383. 6th dist. c't, D D.

(Across the face:)

Ne varietur. In conformity with an act of lease, duly stamped, passed before me this 29th January, 1872.

(Signed) THEO. GUYOL, *Not'y.*

Filed 27th March, 1873.

(Signed) C. W. COLTON, *D'y Clk.*

4619.

335 F. Eastman.
7,000.
June 4.

(Signed) FRED. EASTMAN.
WILLIAM H. AYMAR.

A true copy.

EDWARD H. GANNON, *D'y Clerk.*

Note for $11,000 (*pledged*) *marked A B, offered in evidence March 27th,* 1873.

Copy filed March 27th, 1873 (original withdrawn).

[E. G. Gottschalk. S. Magner. Gottschalk & Magner, Notarial Office, No. 158 Common Street, New Orleans.]

Cap., 11,000; int., 440—11,440.

The payment of this note, amounting to eleven thousand ($11,000), is by consent prolonged for six months, with 8% interest from date until paid.

New Orleans, July 6, 1870.

WILLIAM H. AYMAR.

336 21703.

$11,000.00.] NEW ORLEANS, *July,* 1869.

One year after date I promise to pay to the order of myself, at the City Bank of Louisiana, in this city, the sum of eleven thousand dollars and no cents, with interest thereon at the rate of six per cent. per annum from date until maturity, and if not then paid, to bear interest therefrom at eight per cent. per annum until paid, for value received.

(Signed) M. D. ALLAIN.

To authorize Miss Allain.

J. ALLAIN, *Ppr. Power of Attorney.*

(Across the face:)

Ne varietur. Secured by mortgage duly stamped, $00.5 cents.

(Signed) E. G. GOTTSCHALK, *N. P.*

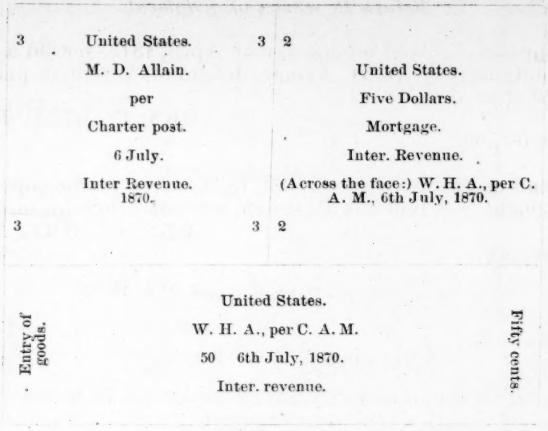
A true copy.

EDWARD H. GANNON, *D'y Clk.*

(Reverse of note:)

2619. (Signed) M. D. Allain. 11,440. Jan'y 9. No. 4383. A. B. Filed 27th March, 1873. (Signed) C. W. Colton, d'y clerk. (Signed) M. D. Allain.

337



Judgment.—Rendered March 27th, 1873.

W. N. MURCER *vs.* F. EASTMAN ET ALS } No. 4383.

On motion of T. H. Kennedy, for plaintiff, praying for the confirmation of the judgment by default in this case, the court considering that all the allegations of the petition and supplemental petition have been fully proved, and that the law is in favor of plaintiff and against the defendants, it is therefore ordered, adjudged, and decreed that
338 the judgment by default rendered herein on the 21st instant be now confirmed, and that the plaintiff, William N. Mercer, do have and recover from the defendants, Frederick Eastman and William H. Aymar, in solido, the sum of seven thousand dollars, with eight per cent. interest thereon until paid, to run on one-half of said sum from 4th January, 1873, and on the other half from the 4th March, 1873, five dollars costs of protest and costs of suit; that said plaintiff do have and recover from said Frederick Eastman the further sum of three hundred and fifty dollars; that plaintiff's right of pledge given to secure the payment of the three rent notes described in the petition and the sum last mentioned herein be and the same is hereby recognised, and that he have the right and privilege of causing the pledged note described in the petition to be sold on the following terms, viz: For a sufficient amount in cash to satisfy the sum of seven thousand three hundred and fifty
339 dollars (and interest) now due and costs of suit, and the balance on a credit to expire on the day when the note for seven thousand dollars described in the petition shall mature; and that if said last-mentioned note of seven thousand dollars shall have matured before the sale of said pledged note shall be made, then the sale thereof may be made for cash for the whole amount of the price of adjudication. In either case the proceeds of sale to be applied to the payment of the plaintiff's whole claim as far as may be, reserving to plaintiff his right of action and said note for seven thousand dollars when it shall mature.

Judgment signed 1st April, 1873.

A. SAUCIER, *Judge.*

Return to service of judgment.

Rec'd April 2d, '73, and on 3rd day of April, 1873, served a true copy of within judgment on W. H. Aymar, defendant herein, in person.
Returned same day.

BEN. C. MIRE, *D'y Sh'ff.*

Sheriff's fee, 50c.

340 And on the 4th day of April, 1873, served a true copy of within judgment on Frederick Eastman, defendant herein, in person.

BEN. C. MIRE, *D'y Sh'ff.*

Shff's fee, 50c.

Fieri faciàs.—Issued April 23d, 1873.

W. N. MERCER
vs.
F. EASTMAN ET AL. } No. 4383.

STATE OF LOUISIANA:

Sixth district ciurt for the parish of Orleans, State of Louisiana.

To the civil sheriff of the parish of Orleans, greeting:
We command you that by seizure and sale of the property, real and personal, rights and credits of defendant, Frederiek Eastman and William H. Aymar, in solido, in the manner prescribed by law, you cause to be made the sum of seven thousand dollars with 8 % interest per annum on one-half said am't from January 4th, 1873, and on the
341 other half from the 4th March, 1873, until paid, $5.00 costs of protest; and Frederick Eastman the further sum of three hundred and fifty dollars, with right of pledge on the property described in the petition, said property to be sold and the terms set forth in the judgment made part; and also the sum of thirty-four $\frac{58}{100}$ dollars costs, as well as your own costs and charges, to satisfy a judgment rendered against the said defendant, F. Eastman and William H. Aymar, in our sixth district court for the parish of Orleans 27th day of March, 1873, in favor of plaintiff W. N. Mercer; and how you shall have executed this writ you make return to our said court (within seventy days) according to law.
Witness the honorable Arthur Saucier, judge of the said court, this 23d day of Ap'l, in the year of our Lord 1873.

FRANK WALL,
Deputy Clerk.

342 *Sheriff's return to fi. fa.*

Received, April 23d, 1873, and made a general seizure in the hands of W. N. Mercer, as will more fully appear by the within annexed notice of seizure, which, with the return thereon, is hereof made part, and of said general seizure the property described in the within annexed notice of seizure, marked B, on which said property I levied this writ, and on the 30th April, 1873, notified Wm. H. Aymar, defendant herein, personally, of the seizure of said property, and no payment being made within the legal delay, said property was advertised for sale according

to law. When, on the 24th June, 1873, previous to the day of sale arriving, said sale was ordered to be stayed by plaintiff's attornies until further orders, and the day within which this writ is made returnable having expired before further proceedings were had, I make this return, still maintaining my seizure upon said property; and at the time of returning this writ I requested the clerk of this hon. court to
343 furnish me with a copy of the same, together with all my proceedings thereon, endorsed according to law. No other property found after due demand of pl'ff's att'ys and of defendants.

Charges as delivered hereon paid.

Sh'ff's fee, $2.00.

Returned July 2d, 1873.

MICHAEL DE ARMAS,
D'y Sh'ff.

Clerk's	$34 10
Printing	3 50
Sheriff's fees (one dollar)	1 00
	38 60

Balance of sheriff's fees previously paid.

Sheriff's notice of seizure.—Issued April 24th, 1873.

STATE OF LOUISIANA,
Sheriff's Office, Parish of Orleans:

W. N. MERCER
vs.
F. EASTMAN ET AL. } No. 4383.

In the sixth district court for the parish of Orleans.

NEW ORLEANS, *April 24th*, 1873.

To Dr. W. N. MERCER:

344 Please to take notice that by virtue of a writ of fieri facias issued in the above-mentioned suit, I seize, in your hands, all the goods, chattels, land, tenements, rights and credits, moneys, effects, bills of exchange, promissory notes, or property of any kind which you may now or hereafter have in your possession or under your control belonging to the defendant W. H. Aymar, particularly a certain promissory note for $11,000 now in your hands, which you will hand over to me.

ROB'T SWAIN,
Deputy Sheriff.

Return on notice.

On the 24 April, 1873, I served a copy of the within notice of seizure on Dr. W. N. Mercer personally.

G. W. BRAND,
D'y Sh'ff.

Sheriff's notice of seizure.—Issued April 29th, 1873.

345 In the 6th district court for the parish of Orleans.

W. N. MERCER
vs.
F. EASTMAN ET AL. } No. 4383.

SHERIFF'S OFFICE, PARISH OF ORLEANS,
New Orleans, April 29th, 1873.

To WILLIAM H. AYMAR:

Take notice that I have seized, and in three days from the service hereof shall proceed to advertise and sell, according to law, the following-described property, to wit, a certain promissory note in words and figures, as follows:

21703.

$11,000 $\frac{00}{100}$. NEW ORLEANS, *3d July*, 1869.

One year after date I promise to pay to the order of myself, at the Citizens' Bank of Louisiana, in this city, the sum of eleven thousand dollars and no cents, with interest thereon at the rate of six per cent. per annum from date until maturity, and if not then paid, to be at interest therefrom at eight per cent. per annum until paid, for value received.

(Signed) M. D. ALLAIN.

To authorize Miss Allain.

(Signed) J. ALLAIN,
P. pro. Power of Attorney.

(Across the face:)

Gottschalk & Magner, notarial office, No. 158 Common street.

Cap. 11,000, int. 440—11,440.

The payment of this note, amounting to eleven thousand dollars ($11,000) is by consent prolonged for six months, with 8 % interest from date until paid.

New Orleans, July 6th, 1870.

(Signed) WILLIAM H. AYMAR.

Ne varietur. Secured by mortgage duly stamped—$00, 5 cents.

New Orleans, July 3d, 1869.

(Signed) E. G. GOTTSCHALK, *N. P.*

346 (Endorsed:)

(Signed) M. D ALLAIN.
WILLIAM H. AYMAR.

[Revenue stamps on back of note for amount of $5 $\frac{50}{100}$.]

To pay and satisfy the writ issued in this case, say the sum of $7,000, with interest and costs, unless the same is immediately paid.

ROB'T SWAIN,
Deputy Sheriff.

Return on notice.

On the 30th April, 1873, served a copy of this notice of seizure on William H. Aymar, defendant herein, personally.

F. M. ANDRESS,
Dy Sh'ff.

Fieri facias.—Issued Dece. 26th, 1873.

Sixth district court for the parish of Orleans.

STATE OF LOUISIANA:

W. N. MERCER
vs.
F. EASTMAN ET ALS. } No. 4383.

347 State of Louisiana to the civil sheriff of the parish of West Baton Rouge, greeting:

We command you that by seizure and sale of the property, real and personal, rights and credits of defendants Frederick Eastman and William H. Aymar, in solido, in the manner prescribed by law, you cause to be made the sum of seven thousand dollars, with 8% interest per annum on ½ said am't from January 4th, 1873, and on the other half from the 4th March, 1873, until paid, $5.00 costs of protest; and of Frederick Eastman the further sum of three hundred and fifty dollars, with right of pledge, and also the sum of thirty-eight $\frac{70}{100}$ dollars, costs, as well as your own costs and charges, to satisfy a judgment rendered against the said defendant F. Eastman and W. H. Aymar in our sixth district court for the parish of Orleans, 27th day of March, 1873, in favor of plaintiff W. N. Mercer; and how you shall have executed this writ you make return to our said court (within seventy days)
348 according to law.

Witness the honorable Arthur Saucier, judge of the said court, this 26th day of Dec., in the year of our Lord 1873.

FRANK WALL,
Deputy Clerk.

Sheriff's return to fi. fa.

Received Jan'y 3rd, 1874.
Returned and settled as per within agreement.

W. A. COHWELL,
Sheriff.

Agreement.

Sixth district court for the parish of Orleans.

WM. N. MERCER
vs.
W. H. AYMAR. } No. 4479.

Sixth district court for the parish of Orleans.

SAME
vs.
F. EASTMAN & AL. } No. 4383.

Fifth judicial district c't, West Baton Rouge.

WM. RASBERRY & AL.
vs.
W. H. AYMAR. } No. 2267.

349 Whereas the sheriff of the parish of West Baton Rouge holds,

under the writs issued in the above entitled causes certain sugars made on the Australia Plantation, in said parish, it is hereby agreed between W. N. Mercer, plaintiff in the two suits first above mentioned, and Wm. Rasberry and the others, parties plaintiff in the third above mentioned suit, as follows, viz:

1st. That the said Mercer release from seizure under the writs of fi. fa. issued in his above mentioned suits, thirty-five hogsheads of the sugar in the sheriff's custody as above.

2nd. William Rasberry & als., plaintiffs in the last mentioned suit above, No. 2267, release the balance of said sugars from their writ of provisional seizure, say hogsheads, and abandon all claim thereto, whether of ownership or privilege, in favor of said Mercer.

3rd. Said Mercer is to pay all sheriff's costs of keeping in the three suits.

4th. This agreement is to take effect from the moment that the plaintiffs, in the third mentioned suit aforesaid, No. 2267, shall be put in possession of the thirty-five hogsheads to be released as above from
350 the said Mercer's two fi. fas., from which moment the said sheriff of the parish of West Baton Rouge will hold only the balance of the sugars subject to Mercer's said writs.

5th. The sugars released from Mercer's two writs are to be hogsheads of average weight and quality, as compared with the whole quantity under seizure.

(Signed in duplicate) KENNEDY & CHIAPPELLA,
Att'ys for Wm. N. Mercer.
CHAS. O. LAURE,
Att'y for Wm. N. Asberry & als., in suit No. 2267.

Notice of seizure, annexed to writ of fi. fa.

STATE OF LOUISIANA,
Parish of West Baton Rouge:

Sixth dist. court, parish of Orleans.

W. N. MERCER
vs. } No. 4383.
F. EASTMAN & ALS.

To W. H. AYMAR:

You will please take notice that by virtue of a writ fieri facias directed to the sheriff of the parish of West Baton Rouge, and issued from
351 the honorable the sixth district court in and for the parish of Orleans and State aforesaid, in the above entitled suit, I have this day seized, by virtue of said writ of fieri facias, all your right, title, interest, and claim in and to the following described moveable property, to wit, one hundred and seven hhds. sugar, appraised at $65.00 per hhd.; five bbls. sugar, appraised at $7.50; 1 lot sugar in cooler, which property I will proceed to advertise and sell, according to law in such cases made and provided, unless you point out other property within three days from the service of this notice sufficient in amount to pay and satisfy the judgment, interest, and costs due in the above suit.

This 5th day of Junuary 1874.

OSCAR HOLT,
Sheriff.

Return on notice of seizure.

Rec'd Jan'y 9th, '74, and on same day, month, and year served a copy of the within notice of seizure on W. H. Aymar in person.

352 Returned same day.

A. RANDOLF,
D'y Sh'ff.

Sh'ff's fees, $1.50.

Notice to keeper.

WEST BATON ROUGE,
Sheriff's Office, May 29th, 1874.

W. H. HATCH, Esq.,
Keeper Sheriff's:

You will please ship sugars seized in suits W. N. Mercer vs. W. H. Aymar, No. 4479, and W. N. Mercer vs. F. Eastman & als., No. 4383, to the civil sheriff of the parish of West Baton Rouge. The smaller package of sugar you will please leave in the sugar-house.

Yours, respectfully,

OSCAR HOLT,
Deputy Sheriff.

Citation annexed to writ of fi. fa.

STATE OF LOUISIANA:

Sixth district court for the parish of Orleans, in the city of New Orleans.

353 WM. N. MERCER *vs.* WM. H. AYMAR. } No. 4479.
and
WM. H. MERCER *vs.* F. EASTMAN & ALS. } No. 4383.

To the sheriff of the parish of West Baton Rouge, La.:

You are hereby summoned to comply with the demand contained in the petition of intervention and third opposition, of which copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the sixth district court for the parish of Orleans in ten days after the service hereof.

Witness the honorable Arthur Saucier, judge of the said court, the 4th day of June, in the year of our Lord 1874.

GEO. L. BLOOMFIELD,
Deputy Clerk.

Court-house opposite Jackson square, cor. of Chartres street and St. Anthony's alley.

Return on citation.

354 Received June 5th, 1874, and on the same day and year served copy of petition of intervention and order thereto annexed on W. A. Colwell, sheriff of West Baton Rouge, in person.

FRANK DELACY,
COT.

Notice.—Issued May 22d, 1874.

STATE OF LOUISIANA,
Parish of West Baton Rouge:

Sixth dist. court, parish of Orleans.

W. N. MERCER
vs.
F. EASTMAN & ALS. } No. 4383.

To F. Eastman, a resident of the parish of Orleans:

You are notified to attend on the premises of W. H. Aymar, on Saturday, 6th of June, 1874, at 9 o'clock a. m., to name an appraiser of the property seized in the above entitled and numbered suit.

This 22nd day of May, 1874.

W. A. CILWELL, *Sheriff.*

Return on notice.

355 Rec'd May 25, '74, and on the 27th day of same month and year served a copy of the within notice on F. Eastman, one of the def'ts herein, in person.

Ret. same day.

FRANK PFISTER,
Deputy Sheriff for the Parish of Orleans.

Sh'ff's fees, 50c.

Appraisement.

STATE OF LOUISIANA,
Parish of West Baton Rouge:

Sixth district court, parish of Orleans.

W. N. MERCER
vs.
F. EASTMAN & ALS. } No. 4383.

We, F. M. Lawhon and W. A. Cilwell, appointed and sworn to make a just and correct appraisement of the hereinafter-described property of F. Eastman & als., this day seized by the sheriff of the parish of West Baton Rouge, by virtue of a writ of fi. fa. to him issued by the hon. sixth dist. court of Orleans in the above entitled and numbered cause, do appraise the same as follows, to wit:

356 One hundred and seven hhds. sugar, @ $65.00 per hhd.

Five bbls. sugar		7 50
		6,955 00
		37 50
		6,992 50
One lot sugar in cooler		15 00
		7,007 50

Sworn to and subscribed before me this 5th day of January, A. D. 1874.

F. M. LAWHON.
W. A. CILWELL.

OSCAR HOLT, *Sheriff.*

Appointment of sheriff's keeper.—Annexed to writ of fi. fa.

STATE OF LOUISIANA:

Sixth district court for the parish of Orleans, West Baton Rouge.

To W. F. Hatch, residing in the parish of West Baton Rouge, State aforesaid:

You will please take notice that I have this day appointed you sheriff's keeper of the hereinafter-described property of F. Eastman
357 & als., this day seized by me by virtue of a writ of fi. fa. directed to the sheriff of the parish of West Baton Rouge, State aforesaid, in the above entitled and numbered cause, by the hon. sixth dist. court in and for the parish of Orleans, State aforesaid, to wit: One hundred and seven hhds. sugar, five bbls. sugar, one lot sugar in cooler.

And you will it safely keep and preserve as a prudent father of a family until discharged in due course of law.

Sheriff's office, West Baton Rouge, January 5, A. D. 1874.

OSCAR HOLT,
Sheriff.

Notice of seizure.—Annexed to writ of fi. fa.

STATE OF LOUISIANA,
Parish of West Baton Rouge:

To F. Eastman, residing in the parish of Orleans, State aforesaid.

Sixth district court, parish of Orleans.

W. N. MERCER
vs. } No. 4383.
F. EASTMAN & ALS.

358 You will please take notice that by virtue of a writ of fieri facias directed to the sheriff of the parish of West Baton Rouge, and issued from the honorable the sixth dist. court in and for the parish of Orleans, and State aforesaid, in the above entitled suit, I have this day seized by virtue of said writ of fieri facias, all your right, title, interest, and claim in and to the following described movable property, to wit:

One hundred and seven h'h'ds sugar, appraised @ $65.00 per h'h'd	$6,955.00
Five b'b'ls sugar appr'd at $7.50	3.7.50
	$7007.50

Which property I will proceed to sell, according to law in such cases

made and provided, unless you point out other property within three days from the service of this notice, sufficient in amount to pay and satisfy the judgment, interest, and cost due in the above suit.

This 5th day of January, 187 .

OSCAR HOLT,
Sheriff.

359 *Return on notice of seizure.*

Rec'd Jan'y 9, '74, and on the 12th day same month and year, served a copy of the within notice of seizure on Mr. F. Eastman, by leaving the same at his domicil, No. 223 Camp street, in the hands of Philip Foster, a person apparently over the age of fourteen years, living and residing in said domicil, said F. Eastman being absent from domicil at the time of said service, all of which facts I learned by interrogating the said Philip Foster.

Ret. same day.

FRANK PFISTER,
Deputy Sheriff for the Parish of Orleans.

Sh'ff's fees, 50c.

Joint motion of Kennedy and Chiappella, att'ys for Wm. N. Mercer and of F. N. Butler, att'y for Henry P. Redmond for subrogation.—Filed May 20th, 1874.

Sixth district court, parish of Orleans.

W. N. MERCER
vs.
F. EASTMAN & AL. } No. 4,383.

360 On motion of Kennedy & Chiappella, of counsel for plaintiff, and of Frank N. Butler, of counsel for Henry P. Redmond, suggesting to the court that said William N. Mercer has, for a valuable consideration, transferred and assigned to said Redmond, on terms and conditions agreed upon by them, (with exclusion of all warranty,) all his, said Mercer's, right, title, and interest in and to this suit, the notes described in the petition, the judgment rendered therein, and the execution issued on said judgment. It is ordered that said Henry P. Redmond be substituted for and in the place of said William N. Mercer, as plaintiff herein, and subrogated to all his rights in the premises.

It is further ordered that defendants be duly notified of this transfer and subrogation.

(Signed) KENNEDY & CHIAPELLA,
Attorneys for Dr. Wm. N. Mercer.

(Signed) FRANK N. BUTLER,
Attorney for Henry P. Redmond.

361 *Sheriff's return.*

Received May 28th, 1874, and on the 29th day same month and year served a copy of the within rule on F. Eastman, one of the def'ts herein, in person.

Ret. same day.

FRANK PFESTER,
D'y Sh'ff.

Sh'ff's fees, 50c.

Fieri facias.—Issued May 20th, 1874.

Sixth district court for the parish of Orleans.

STATE OF LOUISIANA:

WILLIAM N. MERCER, HENRY L. REDMOND, subrogated, *vs.* F. EASTMAN ET AL. } No. 4383.

State of Louisiana to the sheriff of the parish of Orleans, greeting:

We command you that by seizure and sale of the property, real
362 and personal, rights, and credits of defendants Frederick Eastman and William H. Aymar in solido in the manner prescribed by law, you cause to be made the sum of seven thousand dollars, with 8% interest thereon until paid, to run on one-half of said sum from 4th January, 1873, and on the other half from the 4th March, 1873, five dollars, costs of protest, and the further sum of three hundred and fifty dollars, and also the sum of forty-two $\frac{25}{100}$ dollars costs, as well as your own costs and charges, to satisfy a judgment rendered against the said defendants Frederick Eastman and William H. Aymar in our sixth district court for the parish of Orleans 27th day of March, 1873, favor of plaintiff.

And how you shall have executed this writ you make return to our said court (within seventy days) according to law.

Witness the honorable Arthur Saucier, judge of the said court, this 20th day of May, in the year of our Lord 1874.

FRANK WALL.

363 *Sheriff's return to writ of fi. fa.*

Received May 20th, 1874.

Recovered towards the satisfaction of this writ the sum of $3,623.38, which was applied as follows:

Paid clerk's and sheriff's fees, to wit, $51.75; the balance, $3,608.13, paid over to plaintiff's attorney. See statements on the back of this writ.

No other property found after demand made of defendants and of plaintiff's attorney.

Ret'd July 29th, 1874.

ROB'T SWAIN, *D'y Sh'ff.*

Sh'ff's fees on this writ, $1.00.

Statement on back of writ of fi. fa.

Amount received from Milliken		$3,623 38
Paid plaintiff		3,608 13
		$15 25
Bal. on hand from previous settlement		36 48
		51 73
364 Clerk	9 25	
Sh'ff's	6 00	
Sh'ff's com	36 48	
		51 73

(Across the face:) Jo. B., 517.

Sheriff's notice of seizure annexed to writ of fi. fa.—Issued June 1st, 1874.

STATE OF LOUISIANA:

6th district court for the parish of Orleans.

HENRY L. REDMOMD, SUBRIGATOR, } No. 4383.
vs.
F. EASTMAN ET AL.

SHERIFF'S OFFICE, PARISH OF ORLEANS.

To WILLIAM H. AYMAR:

Take notice that I have seized, and, in three days from the service hereof, shall proceed to advertise and sell, according to law, forty-four hhds. of sugar, marks W. N., at the foot of Canal street, to pay and satisfy the writ issued in this case, say, the sum of $7,000.00,
365 with interest and costs, unless the same is immediately paid.

JOS. BOURGEOIS,
Deputy Sheriff.

Return on sheriff's notice.

On the 1st day of June, 1874, served a true copy of the within notice of seizure on William H. Aymar, one of the defendants, in person.

Ret. same day.

JOS. BOURGEOIS,
D'y Sh'ff.

Certificate of clerk.

I, Jos. V. Guillotte, clerk of the sixth district court for the parish of Orleans, do hereby certify that the foregoing fifty-nine pages do contain a full, true, and complete transcript of the record, embodying all proceedings had, documents filed, and testimony adduced on the trial of the cause wherein W. N. Mercer is plaintiff, and F. Eastman & als.
366 are defendants, which said cause was instituted in our said court on the twentieth day of February, in the year of our Lord one thousand eight hundred and seventy-three, under the No. 4383.

In testimony whereof, I hereunto set my hand and affix the seal of our said court, at the city of New Orleans, on the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, and in the year of the Independence of the United States of America the one hundred and first.

[SEAL.] (Signed) JOE V. GUILLOTTE,
Clerk.

Certificate of judge.

I, Nicholas H. Rightor, sole judge of the sixth district court for the parish of Orleans, do hereby certify that Jos. V. Guillotte is clerk of said court; that the same is a court of record having common
367 law jurisdiction; that the signature, "J. V. Guillotte," to the foregoing certificate is in the true and proper handwriting of him, the said Jos. V. Guillotte, clerk, and that to his official acts as such, full faith and credit are due and owing.

And I do further certify that said citation is in due form of law.

Given under my hand and seal at the place and on the day and date to the foregoing certificate written.

[SEAL.] N. H. RIGHTOR,
Judge.

Certificate of clerk.

I, Jos. V. Guillotte, clerk of the sixth district of court for the parish of Orleans, do hereby certify that Nicholas H. Rightor is sole judge of said court, duly commissioned, qualified, acting, and presiding as such; that to his official acts as such full faith and credit are due and owing, and that the signature "N. H. Rightor" to the foregoing certificate is in the true and proper handwriting of him, the said Nicholas H. Rightor, judge.

368

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at the place and on the day and date to the first aforegoing certificate written.

[SEAL.] (Signed) JOS. V. GUILLOTTE,
Clerk.

369 *Record No. 7415.—Fifth district court, parish of Orleans.—Offered in evidence by Charles E. Alter.*

Fifth district court, parish of Orleans.

CHARLES E. ALTER
vs
MRS. EMMA FELICIE ALLAIN PENISTON, wife of Fergus Peniston, and Miss Victoria Elizabeth Allain. } No. 7415.

Petition, note, and order.—Filed May 13th, 1876.

To the honorable the judge of the fifth district court for the parish of Orleans:

The petition of Charles E. Alter, a resident of this city, shews:

That Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, a resident of this city, but now temporarily absent from this State, and Miss Victoria Elizabeth Allain, a resident of this city, are in solido indebted unto your petitioner in the sum of $11,000 (eleven thou-

370

sand dollars), with interest at the rate of eight per cent. per annum from the 1st January, 1872, until paid, for this, to wit:

Your petitioner is holder and owner of a promissory note made by Mrs. M. D. Allain, the wife of Sosthene Allain, and by him authorized through his agent, S. Allain, jr., to make and subscribe said note, which is in the words and figures following:

$11,000.] NEW ORLEANS, *3rd July*, 1869.

Two years after date I promise to pay to the order of myself, at the Citizens' Bank of Louisiana, in this city, the sum of eleven thousand dollars and no cents, with interest at the rate of six per cent. per annum from date until maturity, and if not then paid, to bear interest there-

from at eight per cent. per annum until paid, for value received, said six pr. ct. interest being paid annually.

(Signed) M. D. ALLAIN.

To authorize Mrs. Allain.

(Signed) S. ALLAIN, JR.,
Per Power of Attorney.

(Across the face:)

Ne varietur, secured by mortgage, duly stamped 00.5 cts.
New Orleans, 3d July, 1869.

E. J. GOTTSCHALK.

No varietur all interest paid up to fourteenth of January, eighteen hundred and seventy-two, and payment of principal extended to that date.

(Signed) ANDREW HERO, JR,
Not. Pub.

(Endorsed:)

Pay Amos B. Merrill or order.

(Signed) M. D. ALLAIN.

Received one year's interest on this note without recourse.

(Signed) AMOS B. MERRILL.

(Endorsed:) Chas. E. Alter.

371 The note is hereto annexed and made a part of this petition.

Your petitioner shews that to secure the payment of said note, together with the interest, Mrs. Allain granted the vendor's privilege upon and specially mortgaged in favor of any holder of said note, by act before E. G. Gottschalk, notary public for the parish of Orleans, on the 3rd July, 1869, the real estate described in said act, an authentic copy of which is now hereto annexed and also made a part of this petition.

Your petitioner shows that said act of sale and the mortgage was duly recorded in the recorder's office for the parish of West Baton Rouge, in book of mortgages No. 1, folios 79, 80, 81, entry No. 43, on the 20th July, 1869, and in book of sales No. 3, pages 167, 168, 170, No. 78, on 20th July, 1869, and in the parish of Iberville, in conveyance book No. 9, entry No. 352, and in mortgage book No. 9, entry No. 310, on 26th July, 1869.

Your petitioner shows that Mrs. M. D. Allain, the maker of the note, died on the plantation on 4th Dec'r, 1875, and her husband, Sos-
372 thene Allain, died on 16th July, 1875, leaving as their sole and only heirs and children Emma Felicie Allain, now the wife of Fergus Peniston, and Miss Victoria Elizabeth Allain, both residing in this city; that as the heirs of their aforesaid father and mother they have accepted unconditionally the succession of Mrs. M. D. Allain, their mother, and have taken possession of it, and have made themselves responsible for the payment of the aforesaid note and the claim of your petitioner.

The premises considered, your petitioner prays that Emma Felicie Allain, now the wife of Fergus Peniston, be authorized to defend this suit; that she and Victoria Elizabeth Allain be cited to answer this petition, and condemned in solido to pay your petitioner the aforesaid sum of $11,000 (eleven thousand dollars), with interest at the rate of eight

per cent. per annum from 14th January, 1872, until paid, and costs, with vendor's lien and privilege on the property described in the authentic act made before E. G. Gottschalk, notary public, on 3rd July, 1869,
373 a copy of which is annexed to this petition.
And your petitioner prays for general relief.
(Signed) GEO. L. BRIGHT,
Att'y.

Order.

Let Mrs. Emma Felicie Allain, wife of Fergus Peniston, be authorized to defend this suit as prayed for.
New Orleans, May 13th, 1876.
(Signed) E. NORTH CULLOM,
Judge.

Citation to Mrs. Emma Felicie Allain.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans, in the city of Orleans.

CHARLES E. ALTER
vs.
MRS. EMMA FELICIE ALLAIN PENISTON, WIFE of Fergus Peniston, and Miss Victoria Elizabeth Allain. } No. 7415.

374 Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, Laurel, betw. Napolean av. & Berlin.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, within ten days after the service hereof.
Witness the honorable E. North Cullom, judge of the said court, this 15th day of May, in the year of our Lord 1876.
[SEAL.] THOMAS DUFFY, *Clerk.*

Sheriff's return.

Received May 15th, 1876, and on the 19th day of May, 1876, served a copy of the within citation and accompanying petition on Mrs. Emma Felicie Allain Peniston, wife of Fergus Peniston, and defendant herein, personally.
Returned same day.
(Signed) BEN. C. MIRE, *D'y S'ff.*

375 *Citation to Miss Victoria Elizabeth Allain.*

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans. In the city of New Orleans.

CHARLES E. ALTER
versus
MRS. EMMA FELICIE ALLAIN PENISTON, WIFE of Fergus Peniston, and Miss Victoria Elizabeth Allain. } No. 7415.

Miss Victoria Elizabeth Allain, Laurel, bet. Napoleon av. & Berlin:

You are hereby summoned to comply with the demand contained in

the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fifth district court for the parish of Orleans, within ten days after the service hereof.

Witness the honorable E. North Cullom, judge of the said court, this 15th day of May, in the year of our Lord 1876.

376 [SEAL.] (Signed) THOMAS DUFFY, *Clerk.*

Sheriff's return.

Received May 15th, 1876, and on the 19th day of May, 1876, I served a copy of within citation and accompanying petition on Miss Victoria Elizabeth Allain, defendant herein, by leaving same at her domicil on Laurel, between Berlin & Napoleon avenue, in the hands of Mrs. Emma F. Peniston, a person apparently over 14 year of age, living and residing at said domicil, said Victoria E. Allain being absent from home at time of said service. All of which I ascertained by interrogating said Mrs. Emma F. Peniston.

Returned same day.

(Signed) BEN. C. MIRE,
D'y Sh'ff.

Default.—Extract from the minutes.

NEW ORLEANS, *Thursday, May 31st*, 1876.

Court met pursuant to adjournment. Present, Hon. E. North Cullom, judge.

377 CHARLES E. ALTER
vs.
MRS. E. F. ALLAIN. } No. 7415.

On motion of counsel for plaintiffs in these cases, and on showing to the court that the defendants F. Matt, Mrs. E. F. A. Peniston, Miss V. E. Allain, and Basil Dabat have failed to answer although duly cited, it is ordered that judgment by default be entered against them.

Judgment.

Fifth d't c't.

CHARLES E. ALTER
vs.
MRS. EMMA FELICIE ALLAIN PENISTON, WIFE OF Fergus Peniston, and Miss Victoria Elizabeth Allain. } No. 7415.

On motion of Geo. L. Bright, att'y for the plaintiff, and by reason of the evidence and the law being in favor of the plaintiff, it is ordered, adjudged, and decreed that the judgment by default entered
378 herein on 31 May, 1876, be now confirmed and made final, and that the plaintiff, Chas. E. Alter, do have and recover judgment against Emma Felicie Allain, now the wife of Fergus Peniston, and Victoria Elizabeth Allain, in solido, for ($11,000) eleven thousand dollars, with interest at the rate of eight per cent. per annum from 14th January, 1872, until paid, and costs, with vendor's lien and privilege and mortgage on a certain tract of land or plantation situate and being

partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon and forming the point known as Point Manchac opposite Bayou Manchac; said tract of land being cultivated as a sugar plantation known as Australia plantation, bounded on the upper line by lands of Valson Fullier (exclusive of the Brackin tract), containing in all an area of fifteen hundred and one $\frac{34}{100}$ acres ($1,501.34) or seventeen hundred and seventy-four superficial arpents and $\frac{53}{100}$ of an ar-
379 pent; and being composed of different tracts of land acquired by Sosthene Allain, as per plan of said plantation as surveyed by Auguste Wrotnoski in March, 1860; said plan being now in the hands of Felix Grima, a notary public in this city, and were fully described in the act of sale of Amos B. Merrill to Mrs. M. D. Allain before E. G. Gottschalk, not. public, dated 3d July, 1869.

Judgment ordered June 5th, 1876.

Judgment signed June 9th, 1876.

(Signed) E. NORTH CULLOM, *Judge.*

Amended judgment.

Fifth dist. court, parish of Orleans.

CHAS. E. ALTER
vs.
MRS. EMMA FELICIE ALLAIN PENISTON AND Miss Victoria Elizabeth Allain. } No. 7415.

On motion of Geo. L. Bright, att'y for the plaintiff, and by consent of the defendants, it is ordered that the judgment rendered on the
380 5th of June, 1876, be amended so as to read as follows:

Judgment.

On motion of Geo. L. Bright, att'y for the plaintiff, and by reason of the evidence and the law being in favor of plaintiff, it is ordered, adjudged, and decreed, that the judgment by default herein entered on the 31st May, 1876, be now confirmed and made final, and that the plaintiff, Charles E. Alter, do have and recover judgment against Emma Felicie Allain, now the wife of Fergus Peniston, an' Victoria Elizabeth Allain, in solido, for ($11,000) eleven thousand dollars, with interest at the rate of eight per cent. per annum from 14th January, 1872, until paid, and five per cent. attorneys' fees on principal and interest and costs, with vendor's lien and privilege and mortgage on a certain tract of land or plantation situate and being partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon and forming the point known
381 as Point Manchac, opposite Bayou Manchac, said tract of land being cultivated as a sugar plantation known as Australian plantation, bounded on the upper line by lands of Valsin Fullier, (exclusive of the Brackin tract, containing about ninety acres), containing in all an area of fifteen hundred and one $\frac{34}{100}$ acres ($1,501.34) or seventeen hundred and seventy-four superficial arpents and $\frac{53}{100}$ of an arpent, and being composed of different tracts of land acquired by Sosthene Allain, as per plan of said plantation as surveyed by Auguste Wrotnoski in March, 1860, said plan being now in the hands of Felix Grima, a notary public in this city, and more fully described in the act of sale of Amos B. Merrill to

Mrs. M. D. Allain before E. G. Gottschalk, notary public, dated 3rd July, 1869.

Judgment rendered and signed July 3, 1876.

(Signed) E. NORTH CULLOM,
Judge.

We consent to the foregoing motion and that the judgment be signed immediately. Appeal waived.

E. F. ALLAIN PENISTON.
V. ALLAIN.
G. DUPLANLIER,
Att'y for Def'ts.

382 TESTIMONY ON BEHALF OF CHARLES H. ALTER.

United States circuit court. In equity.

FRANK M. AMES, ED. J. GAY, SUBROGATED, *vs.* MARGARET D. ALLAIN & AL. } No. 6894.

Testimony taken by agreement on January 26th, 1877.—Reported by C. W. Colton, stenographer.

Geo. L. Bright, esq., for C. E. Alter; David Barrow, esq., for E. J. Gay; F. N. Butler, esq., for Aymar.

E. T. MERRICK sworn and examined on behalf of Charles E. Alter.

By Mr. BRIGHT:

Q. Were you counsel for the plaintiff, Frank M. Ames?

A. I was counsel for him in the case of Ames against Allain and Aymar, No. 6894, I think of the docket of the United States circuit court.

383 Q. You obtained the judgment that was rendered in his favor in that suit?

A. I did.

Q. Did you ever negotiate with John T. Redmond or Frederick Eastman or William H. Aymar or Frank N. Butler, acting for any or all of them, for the sale of that judgment? If yea, state all that occurred.

A. There were several negotiations in reference to the judgment, some of which, I think, had reference to the execution of it, and there was one which had reference to the conditional sale, as I understood it at the time. I suppose it is this last negotiation to which you wish to call my attention. I have some memorand' here in reference to it. The business was transacted through a broker.

Q. What was his name?

A. Thomas S. Elder; I do not think that the name of the principal was disclosed at that time. I have here the correspondence between the broker and myself or the firm; I think it was myself; yes, it
384 was myself; at all events I have a part of it.

The witness produces three documents, which are marked 1, 2, and 3, which are copied as follows, by agreement of counsel, the witness desiring to preserve the originals:

Document 1 is as follows:

NEW ORLEANS, *May 7th*, 1874.

Judge E. T. MERRICK,
Atty for F. M. Ames, New Orleans:

SIR: I am instructed to accept the proposition mentioned by you to-day for the entire claim of Mr. Ames against Australia Plantation and W. H. Aymar, the present owner, to wit: The price of eight thousand dollars, and the fees, payable three thousand dollars in cash, within thirty days or less time, the balance to be paid between this time and next January, all the papers to be held for the deferred payments.

Whatever may be realized from your lien on the sugar will be considered as part of the first cash payment.

385 The party understands that the "fees" will not exceed five per cent. on the whole amount of the claim. Upon your approval of this agreement the party will immediately make his arrangements to prepare funds, and expects to be able to settle for the cash payment in a few days.

Respectfully,

THOS. H. ELDER,
Broker.

The document marked 2 is as follows:

NEW ORLEANS, *May 8th*, 1874.

Judge E. T. MERRICK:

SIR: In addition to the proposition written to you yesterday and accepted by you for the settlement of the claim of Ames against the Australia Plantation, it is mutually understood that your claim for fees is one thousand ($1,000) dollars, which is to be settled, half in sixty to ninety days from this time, and the remaining half by or before 1st January next.

Respectfully,

386 THOS. S. ELDER,
Broker.

The document marked 3, is as follows:

Dated Canton, Mass., 5, 187 . Received at .

To Judge E. T. MERRICK:

Under unfortunate condition, you may accept eight thousand ($8,000) and costs, etc., etc.

T. M. AMES.

WITNESS. As to this telegram from Ames, I will state that I suppose I telegraphed to him that the proposition was accepted.

I will state that the three thousand dollars in cash was paid over to me or to the firm, and I think it was transmitted to Ames, or, at all events, it was paid over to him. On reflection, I am inclined to think that we paid it over to him here in the city; the fees were never paid. The contract, further than the payment of the three thousand dollars, fell through so far as Ames was concerned. There had been a

387 previous agreement in reference to the crops on the plantation, by means of which one half of the sugar crop was to be applied to this judgment.

The reference made in this agreement to the application of the crop has reference to that former agreement. I allude to these words:

"Whatever may be realized from your lien on the sugar will be considered as part of the first cash payment." The way that business was fixed up was this: This decree in the case No. 6894 was in the circuit court. There was danger of seizure of the property in the State courts. Doctor Mercer had judgments, as I understood, in the State courts. It was agreed, I think, that a seizure should be made on the crops on Doctor Mercer's judgments, and that one-half of the proceeds of the crops should be paid over to Frank M. Ames; and I suppose the party who was interested in this contract got the benefit of that sugar, whatever it was. I do not know this of my own personal knowl-
388 edge. A good deal of this I am testifying to is only what I understood, but it had reference to the contract, and formed the basis of it.

My understanding in relation to three judgments, as communicated to me by Judge Kennedy, perhaps, or some other person, entered in as an element into the agreement which was made. If we had not supposed there were such judgments, of course we would not have made the agreement.

Q. From whom did you receive the three thousand dollars?

A. It must have been received from the broker. I have no distinct recollection of it. I must say, in reference to this testimony, that my memory is not always perfect.

Q. Did you ever ascertain for whom this broker was acting?

A. I think that perhaps a year or so afterwards Mr. Butler may have informed me. I do not remember now who it was that he named, if he named anybody.

389 Q. Was the purchaser of this judgment ever made known to you?

A. I cannot say; my memory does not permit to say.

Q. Did you give any written receipt for three thousand dollars?

A. I do not think I did.

Q. Did you know to whom the transfer was to be made?

A. I did not. It occurred to me that holding this three thousand dollars we had sufficient security to gua'ntee the payment of it, but it seems that I was mistaken. The worst of it was that they did not pay our fees.

Q. Did you ever make a demand for the five thousand dollars and costs?

A. There was some business transacted by Colonel Race, but I do not remember now whether we did or did not demand it of Mr. Butler.

Q. Mr. Butler was counsel for whom?

A. Mr. Butler was counsel for this unknown party, the purchaser, as I thought.

Q. Do you not know that he was also counsel for William H. Aymar?

390 A. I think he had been counsel for Mr. Aymar. I think that a previous agreement in relation to the crop was made after a consultation with him at his office. I think Messrs. Lacey and Butler were then the counsel.

Q. Then you never knew who was the purchaser of this judgment?

A. I cannot say that. It may be that Mr. Butler told me, but if he did the name has escaped my memory. There were some parties that had connection with this business. There was a Mr. Eastman who had something to do with it.

Q. Did you ever give any written evidence on the part of Mr. Ames to any person relating to the sale of this judgment?

A. I do not remember. I think that Mr. Ames, when he sold the judgment to Messrs. E. J. Gay and Company, transacted the business here in person. My memory is not good about past transactions.

Q. Subsequent to the transaction referred to in the documents
391 marked 1, 2 and 3, Mr. Ames transferred this judgment to some one else?

A. Yes, sir, as I understood.

Q. To whom?

A. I think it was to either E. J. Gay or E. J. Gay & Co. The papers will show.

Q. The transfer is in writing?

A. I suppose I must have seen it.

Q. Will you state upon what terms and conditions the transfer was made to Edward J. Gay or Edward J. Gay and Company?

A. The contract itself will show, I reckon.

Q. When this transfer was made by Ames to Gay, was Gay informed of the previous transfer mentioned in the documents marked 1, 2 and 3, or anything relative thereto?

A. I cannot say that these papers were shown to him, but I think he had knowledge of it.

Q. Was not that previous transfer the subject of conversation with him?

A. It was.

Q. Did you ever meet Mr. Redmond or Mr. Eastman upon this subject?

392 A. I do not think I did on this subject of this sale.

Q. They never called upon you to complete the transfer?

A. No, sir.

Q. Did you ever call upon them to complete their part of the agreement?

A. I think that there was a demand make by Colonel Race in writing. I am not certain; but this matter was spoken of between Mr. Butler and myself. I mean the completion of it. It seems that they were unable to comply with their contract on their part, and, I think, he assented to it.

Q. Documents 1, 2, and 3 refer to the judgment of Ames in suit No. 6894, do they not?

A. They refer to the decree in that case.

Q. In the sale made to Gay, did you, acting as the agent of Mr. Ames, guarantee to Mr. Gay the full amount of this judgment for the price of five thousand five hundred dollars?

(Mr. Barrow objected to the question on the ground that the act of sale was the best evidence.)

393 A. I do not think that there was a guaranty. I am not certain that Mr. Ames did not himself have a conversation with Mr. Gay in regard to it; but my understanding was that in the event that this three thousand dollars was shown to be a payment on that judgment, Gay or Gay and Company would submit to that claim without any reclamation against Ames.

Q. Did you gather this understanding from any conversation with Gay?

A. There was a conversation with Mr. Gay, and there were conferences, I think, between Mr. Gay and Mr. Ames at which I was not present. I think the main business was transacted, probably, Mr. Ames and Mr. Gay.

Q. But from the conversations at which you were present, did you gather that understanding?

A. I think so, or it may be that it was from a counter letter. There may be a counter letter in existence. I do not know. I do not remember.

Q. If it is in existence, who has it?

394 A. That is more than I can tell. It ought to be in the possession of Ames, I think.

Q. Was the subject of the counter letter spoken of?

A. That is more than I remember. If I transacted that business, I would think that I had something to show in regard to that three thousand dollars. That would be my impression from my mode of transacting business.

Q. Have you looked among your papers for the counter letter?

A. I do not think I should have kept it. Shortly after the payment of the five thousand five hundred dollars, Mr. Ames came to the office and settled up our fees in this case out of this sum, and also paid some other small sums that we had advanced, I think, for him, and I dismissed this business from my mind after coming down to court here, and having Gay and Company subrogated to the judgment.

Q. Ames transacted part of this business with Gay personally?

A. I think so.

Q. I see the act is signed by you.

395 A. Well, there was some reason for it. Ames was in the city, I am sure, at the time I signed this instrument. He had given me a power of attorney to make this transfer to Gay, or Gay & Company, prior to his coming out here, but his letters or instructions were so indefinite that I refused to carry out what he had agreed upon with Mess. E. J. Gay and Company himself in some correspondence. I required that he should give me definite and positive instructions to do what he required. When he came out here, then the business was transacted between him and Mr. Gay, and they finally concluded, for some reason that I do not remember, that, as I had the power of attorney, it would be better for me to draw up this instrument.

Q. Have you got that letter of instructions from Mr. Ames?

A. Those letters ought to be at the office. That power of attorney might have been a general power to sell.

Q. Have you any letters from Mr. Ames relative to transfer-

396 ring this judgment to Edward J. Gay?

A. I am unable to say whether we have letters or telegraphic dispatches or both.

Q. But you have some?

A. Yes, sir; I am sure that there are telegraphic dispatches.

Q. Will you look for them and produce them?

A. I will try to look for them, and will annex them to my testimony. I ought to say that I was in Virginia in the summer and some portion of the business was transacted, I think, by Colonel Race, and some correspondence was had between Colonel Race and Ames during my absence.

Q. Did anybody ever ask you to return the three thousand dollars which had been paid?

A. I think Mr. Butler said at one time that there would probably be a suit or some litigation in regard to that conditional sale. I do not think that any demand was made for the three thousand dollars. At all events, I have no recollection of it as a specific sum. I should have supposed

397 that that would have been met by the damage done to Mr. Ames

by virtue of this contract, by means of which the party had control of the judgment and the means of obtaining one-half of the sugar. That is, he had control of the judgment so far as it affected the crop.

Cross-examined by Mr. BARROW:

Q. When this three thousand dollars was paid, was it or not distinctly understood that there was to be no transfer, and that the sale was simply inchoate until the whole amount was paid?

A. Well, the business was transacted in a few words in reference to the contract. There had been some conversation with the broker, and he sent in this proposition, which says: "All the papers to be held by you as security for the deferred payments." I think he said, "I think you will be perfectly secure, because you will hold everything in your hands until the money is paid," or something to that effect.

Q. You spoke of a previous agreement that was made with Mr.
398 Ames relative to the receiving of a part of the crop?

A. Yes, sir.

Q. Were you or not notified of the rights of Doctor Mercer in that contract, and that the agreement was to be carried out by some one else; if so, by whom was it to be carried out?

A. Yes, sir; I received this letter from Judge Kennedy.

The witness here produced a document which is marked 4, and which is copied as follows:

NEW ORLEANS, *20th May*, 1874.

Hon. E. T. MERRICK,

DEAR JUDGE: Doctor Mercer has assigned his judgments against Mr. Aymar to Mr. H. P. Redmond. It is a part of the bargain that the arrangement in regard to Mr. Ames' interest in the sugars shall be carried out by Mr. Redmond. Mr. Aymar knows of the transfer and, as I am led to believe, has given you notice of it.

Mr. Frank N. Butler of the firm of Lacy and Butler, conducted
399 the negotiation on behalf of Mr. Redmond, and I refer you to him for the future.

Yours, truly,

T. H. KENNEDY.

WITNESS. That letter, I suppose, has reference to this agreement.

The witness here produced a document which is marked 5, and copied as follows:

NEW ORLEANS, *December 26th*, 1873.

Whereas Dr. W. N. Mercer has caused executions to issue on his judgments obtained in suits Nos. 4479 and 4383 of the docket of the sixth district court of Orleans, against William H. Aymar and F. Eastman, which writs are directed to the sheriff of the parish of West Baton Rouge; and whereas the said Aymar is under obligations to said W. N. Mercer and to Ames, esq., to devote and appropriate to each of them one-fourth part of the present crop of sugar of the Australia Plantation, lying partly in said parish, in part satisfaction of their prospective claims against him; it is therefore hereby understood and agreed that Dr. W. N. Mercer will (the said Aymar thereto
400 consenting) release from his seizure under said writs in favor of said Ames and abandon to him one-fourth part of whatever sugars of said crop may be taken under said writs or the net proceeds thereof, it being the intent hereof that said Mercer and Ames shall have

as far as possible the full benefit of their respective agreements with said Aymar in relation to said sugars.

FRANK M. AMES,
Per pro. Race, Foster & E. T Merrick.
W. NUDFORE MERCER.

The witness also produces and annexes to his testimony a document marked 6, copied as follows:

United States circuit court, district of Louisiana, in chancery.

FRANK M. AMES,
vs.
MARGARET D. ALLAIN, WIFE OF SOSTHENE ALLAIN, SOSTHENE ALLAIN & WILLIAM H. AYMAR. } No. 6894.

401 This agreement between complainant's favor for the sale of the said Australia plantation and appurtenances, to pay complainant, as set forth in said decree, and whereas the said W. H. Aymar has arranged with the laborers and others to cultivate said plantation in sugar, on shares; and, whereas, it would be unjust to the said laborers and prejudicial to the interests of all parties to seize said plantation at the present time; and, whereas, said defendant, Aymar, has consented to apply one-half of his share of the crop of sugar exclusively to the extinguishment of said decree, in favor of said complainant, and to this end hath agreed to ship one half of his share of all the sugar to be made on said plantation, of the present crop, to Richard Milliken, as commission merchant, to sell, and pay the proceeds thereof to the complainant:

Now, therefore, it is agreed between complainant and defendants, for their mutual advantage, that execution of said decree shall be
402 stayed until the 28th day of February, A. D. 1874, on condition and provided the said W. H. Aymar shall, as the same is ready for market, in good faith, ship the above-mentioned proportion of said crop of sugar making and to be made on said Australian plantation to said Richard Milliken, for sale, and the proceeds thereof shall be paid over to complainant, as above stated; but in the event said Aymar shall fail to have said plantation cultivated, or, at the proper season, shall fail to ship said proportion of said crop of sugar, as herein agreed upon, to said Richard Milliken, on account of said complainant, as aforesaid, execution shall issue, notwithstanding this agreement.

May 24th, A. D. 1873.

RACE, FOSTER AND E. T. MERRICK,
For Complainant.
WILLIAM H. AYMAR.

I hereby agree to carry this inchoate agreement into effect, it being however understood that it is subject to the approval of Mrs. Allain, who may require an execution to issue at any time should she so desire.

403 Nov. 24th, 1873.

F. EASTMAN.

The witness also produces and annexes to his testimony a document marked 7, which is copied as follows:

CANTON, *April 10th*, 1876.

Judge MERRICK:

DEAR SIR: I send herewith power of attorney for you to sell and transfer all my right and title in mortgage note signed by M. D. Allain dated 3rd July, 1869, and all my powers, &c., under judgment in U. S. circuit court, rendered May 24th, 1873, to Edward J. Gay, of New Orleans, for the sum of five thousand five hundred dollars ($5,500.)

It is understood that the money heretofore paid me on this note, $3,000.00, is to remain with me in any event; that under no circumstances can either Gay or the party who paid the amount to you recover it in any suit against me.

Yours truly,

F. M. AMES.

404 Mr. Barrow objected to the last mentioned document and to all documentary evidence as to matters which took place prior to the transfer from Ames to Gay, on the ground that they related to conversations had and memoranda made prior to the reducing of the contract to writing, and that the contract itself was the best evidence as to what was agreed to.

The witness also produces and annexes to his testimony a telegram marked B, which is copied as follows:

(Dated Canton, Mass., 15th, 1876. Received at 8.30 p. m., April 15.)

To Judge E. T. MERRICK, *N. O.*:

You must decide the probability of having to refund in case suit is brought to recover. Write.

F. M. AMES.

The witness also produces and annexes to his testimony a document, marked 9, which is copied as follows:

CANTON, *April 29th*, 1876.

Judge MERRICK:

405 DEAR SIR: Yours of April 17th came at hand during my absence. I send herewith copy of letter sent Mr. Gay and copy of extracts from your and Aymar's letters. I never supposed you were dealing with any person beside Aymar. Your letter will not warrant any other supposition. How can Aymar recover any money he may have paid on the above note, even though he borrowed the money. The party, if not Aymar, proposes to repudiate his contract; * * * promises to pay $8,500; $3,000 cash and the $5,500 in less than eight months—a year ago, and proposing $2,000 as outside price, &c., &c. I am surprised that you did make proper papers at the time. I never for a moment supposed there was anything loose in the transaction. The idea occurred to me while writing you to guard the $3,000, and I so noted it to you.

Please see that everything is all straight, and settle the matter with Mr. Gay; of course I shall not sell the note for $5,500, and have party recover the $3,000.

406 Yours, truly,

F. M. AMES.

By Mr. BRIGHT:

Q. In this letter the writer says that he sends you a copy of a letter sent to Mr. Gay and also copy of extracts from your and Aymar's letters. Have you that copy of that letter and the copy of those extracts?

A. I suppose I have a copy. I do not consider that I ought to give them, because I consider they were communicated to me as a lawyer as well as an agent.

Q. He says here that he sent it to Mr. Gay.

A. I do not think that as a lawyer I ought to give that up. I decline until it is referred to the court.

(Mr. Barrow objected, on the ground that the original of the paper referred to should be called for from Mr. Gay.)

WITNESS. Here is another telegram. I do not whom that referred to, but it must have been the same.

407 The witness here produced and *and* annexed to his *statement* testimony a telegram marked 10, which is copied as follows:

(Dated Canton, Mass., 30, 1874. Received at .)

To Judge E. T. MERRICK, *N. O.*:

Will sell Allain note for nine thousand dollars and legal expenses within sixty days. Aymar proposes sixty-five hundred.

F. M. AMES.

The witness also produces and annexes to his testimony, which is marked 11, and copied as follows:

(Dated Canton, Mass. 9, 1874. Received at .)

To Judge E. T. MERRICK, *N. O.*:

Elder's proposition received. Substitute nine for eight thousand, and accept security unquestionable.

F. M. AMES.

The witness also produces and annexes to his testimony a document, marked 12, which is copied as follows:

CANTON, *April 9th*, 1874.

Judge E. T. MERRICK:

408 DEAR SIR: Your favors of 2nd & 3rd are at hand, also proposition of T. S. Elder. I have telegraphed you: "Elder's proposition received; substitute nine for eight thousand, and accept security unquestionable." The note with interest amounts to $13,000, more or less. We think it is all the discount we should accept. The sum named above, $9,000 is to be paid in 90 days, and all expenses incurred for your fees, expenses court, Williamson's visit to the plantation, are to be paid 10 days from this date.

I do not think we should accept any less, but it may be best to shade it a very little, say $250.00, rather than lose the trade.

I want to get every cent from the note possible, but it won't do to be so very sharp as to cut our own fingers.

Yours in haste,

F. M. AMES.

The witness also produces and annexes to his testimony a letter, marked 13, which is copied as follows:

CANTON, *July 21st*, 1875.

Judge MERRICK:

409 DEAR SIR: Your favor of the 16th is at hand. This is the first I have heard from you about the matter. Suppose your letters

must have been lost. Who is this Mr. Butler? I have not heard his name mentioned before. What is the plan? Is it to promise a small sum now, with an additional one 90 days hence. At the expiration of that time delay 8 or 10 months, and then propose half the sum? The proposition fourteen months ago was to pay $3,000 cash, and all expenses, and $5,000 on or before January 1st, 1875. Now the proposition is from some party to pay $1,000 in thirty days, and $2,000 in ninety days, or, in other words, a reduction of $2,000 and interest, and expenses to be paid by us; that is, if I understand the proposition. I think we had better sell the place for the most it will bring in December next, rather than submit to any such sacrifice now.

The expenses paid by us, your fees, Williamson's expenses, un
410 paid interest, &c., will make a sacrifice of about $3,000 on price of last year—all from delaying three years for accommodation of Aymar and others. The note, with interest, will amount to nearly $15,000. What are the other parties doing? Do they propose to sell their interest, or do they retain it? I suppose the plan meets the approval of the party owning the second note, whose name I have forgotten. If they get rid of us he can then sell out the place for his own benefit. I am writing, however, about a matter I know little about, as I do not know what proposition has been made to you.

You will please write me in detail, so that I may not sell our note on the terms named yours, however.

The party who now proposes to pay any sum ninety days hence must give us responsible endorsers to his promises.

I have written hastily, as it is time for mail to close.

Yours, truly,

F. M. AMES.

411 The witness also produces and annexes to his testimony a letter marked 14, which is copied, as follows:

CANTON, *September 7th*, 1875.

GENTS: You did not write me what the proposition "from the lady" was. I never heard of it except through your telegram. I do not think Butler's proposition a very favorable one. If the plantation should continue to show as favorable results as that of last year and as now expected this year, there will be a demand for them.

From all I can learn of the Australia plantation, the location is particularly favorable, and it should bring a fair price in the new order of things.

Yours, truly,

F. M. AMES.

WITNESS: Mr. Gay came to the office and tendered to me in greenbacks five thousand five hundred dollars on account of an agreement which he said had been entered into between himself and Mr. Ames, as I understood, by letter for the transfer of this judgment.

412 I declined making a transfer at that time. The letter which I now produce, and which is marked 15, was probably written after that occurred. The letter marked 15 is copied as follows:

CANTON, *May 11th*, 1876.

Judge E. T. MERRICK,

DEAR SIR: Your favors of the 5th and 6th instants are received. I do not know what you mean by saying "the proposition of the broker

was forwarded to you when you accepted the first proposition under which the first three thousand dollars were paid," unless you refer to some letter of yours. I had a letter from you enclosing one from Thos. S. Elder, a copy of which is enclosed, dated April 3rd, 1874; a telegram from Aymar, of March 29th, 1874, and one from Butler, of July 29th, 1875, which are all I have from any one in relation to sale of property prior to those from Mr. Gay. I had one from Aymar in February, 1873, proposing to give me a portion of the crop—

413 "If you will consent to extend the time for foreclosing your mortgage against the plantation for one year." All other communications are in your own writing.

I desire to have this matter amicably settled. You say that I shall be entitled "to retain, under our law, so much as will ind*en*tify you for a non-compliance on his part." He was to pay me $3,000 in cash, $5,500 in, say, seven months from June 3rd, 1874, and pay for legal expenses, and your fees, &c. These expenses will amount to, say, $140 and your fees. We now propose to sell the note for $5,500, which, with the $3,000 paid and expenses will not be any more than we were to receive in June, 1874, and beside this we pay your fees in addition. In this view, if correct, we would be entitled to all we have received.

The party, whether it be Aymar or his broker, does not propose to carry out his proposition, at any rate. If you will con-

414 sult with Mr. Gay in the matter and see if this cannot be satisfactorily arranged, I wo'ld be much pleased. It would be probably better to have the property advertised for sale at once, under the authority of the U. S. court, than to have the matter further complicated.

Please see Mr. Gay and see if some arrangement cannot be made to have the sale made. I will sacrifice $500 and let him have the note for $5,000, if he will gua'ntee me against further loss. You are authorized to accept $5,000 for the note under this condition; Gay to guarantee me against any loss or expense in case the party who paid the $3,000 should bring a suit to recover the money or any portion thereof. You will remember that there was quite a sum due me for the sugar that was made under the arrangement with Aymar to pay one-fourth of all the sugar of crop of 1873.

Yours, truly,

F. M. AMES.

415 I have written very hastily, and have had two or three talking to me, and I fear not very inteligibly.

By Mr. BARROW:

Q. You have stated in your direct examination that this matter of the three thousand dollars was spoken of before Mr. Gay made the purchase. Was it or was it not spoken of as an inchoate sale made by third parties, or a proposition of sale made by third parties to Ames?

A. Well, I cannot say what the precise language was, but what occurred in my presence was of such a nature that I should undoubtedly have tried to communicate correctly the thing as it was. I do not remember to have shown these instructions, but I think Mr. Gay knew about the substance of it, or I think that about the substance of it was communicated *of it was communic'* to him.

Q. That substance was that the party had made a proposition

416 to purchase the judgment and had paid thereon three thousand dollars, which amount Mr. Ames had in his possession?

A. Yes, sir, and probably it was further communicated to him that these papers were left in my hands to insure the performance or as a security for the performance of the contract; and he was probably informed that our fees had not been paid, and that nothing more was done with it than to pay the three thousand dollars and that the party obtained under that agreement the crop, whatever it was.

EDWARD J. GAY sworn and examined on behalf of Charles E. Alter.

By Mr. BRIGHT:

Q. Mr. Gay, did you give to Mr. Ames or to any person for him a counter letter?

417 Q. Well, Mr. Barrow just mentioned that. I do not recollect it. If Judge Merrick has got one, I would like to have him produce it. If he says so, it must be so, but I do not recollect it. I have so many transactions that I would not be positive that there was none, but that can be ascertained from Mr. Ames, I suppose. I might even be able to find one myself, because, if there was one, I kept a copy of it. I do not recollect it at all.

FRANK N. BUTLER sworn & examined on behalf of Charles E. Alter.

By Mr. BRIGHT:

Q. Mr. Butler, did the three thousand dollars received by Mr. Ames pass through your hands?

A. Yes, sir; it did.

Q. You made the payment?

A. I did.

Q. From whom did you directly receive the three thousand dollars?

418 A. Well, as far as my recollection goes, it was received directly from the sheriff of the Parish of Orleans, realized from the sale of certain sugars that were under seizure in a suit entitled W. N. Mercer against W. H. Aymar in the sixth district court; that is my recollection; I may be mistaken about it; that is to the best of my recollection. It has been a long time ago, and I have not charged my memory with it.

Q. By whose direct instructions did you pay the three thousand dollars to Mr. Ames?

A. I was directly instructed by Mr. Frederick Eastman to pay Mr. Merrick three thousand dollars for account of Mr. Henry P. Redmond, as coming at his request, for a part compliance with the contract for the purchase of the note then held by Mr. Ames, and which contract was to the effect that three thousand dollars cash was to be paid then and the balance of five thousand dollars to be paid, I think, on the first of December following. This was in the year 1874. It was with the understanding that when the five thousand dollars should have been paid,

419 then Mr. Ames was to make a transfer and subrogation to Mr. Redmond of all his rights in the suit of Frank M. Ames against Margaret D. Allain and others, No. 6894, United States circuit court.

Q. Is it not to your knowledge that Eastman and Redmond were but the representatives of Mr. Aymar?

A. Is it not. On the contrary, I had every reason to believe that they were acting in their own interest—either Mr. Eastman for Mr. Redmond or Mr. Redmond for Mr. Eastman, or separately, but not for Mr. Aymar. I will state that Mr. Aymer, I believe, was fully aware of what was going on.

Q. It is not to your knowledge that Mr. Aymar was in the habit of having claims against himself purchased in one way and in another by Redmond and Eastman or either of them?

A. I know this: that Mr. Redmond and Mr. Eastman have made several purchases of claims against Mr. Aymar.

Q. Is it not to your knowledge that either of them was connected in business with Mr. Aymar?

A. Not at that time, that I know anything about.

420 Q. Or at any other time?

A. I believe, although I do not know it to be a fact, that Mr. Eastman was at one time, many years ago, employed by Mr. Aymar.

Q. In what capacity?

A. Well, I do not remember what his capacity was.

Q. Was he not a clerk for Aymar?

A. I believe he was employed by him, but in what capacity I do not know. Whether he was engaged as a bookkeeper or whether he was engaged in his presses or not, I do not know.

Q. Aymar was the owner of a cotton press?

A. I believe he had ceased to be the owner of any cotton press at that time.

Q. Did he not cease by leasing to one or the other of those persons?

A. I know nothing about it.

Q. Was not one or the other of those persons the clerk of that cotton press?

A. I do not know really what cotton press Mr. Eastman was connected with or what cotton press Mr. Redmond was connected with. I am not able to state further than this: That I had understood,

421 and, possibly, years ago may have seen Mr. Eastman in some cotton press which belonged to Aymar.

Q. Who is now taking an active part in the distribution of these funds? Is it Mr. Redmond individually or is it Mr. Aymar?

A. Well, I really do not know that either of them is taking an active interest in the distribution of the funds.

Q. Does either of them claim any part of these funds?

A. Mr. Aymar has never claimed any part of the funds to me. Mr. Eastman did at one time.

Q. Does Mr. Eastman now claim any part of them?

A. Not that I know of, sir.

Q. Has Mr. Aymar ever employed you as counsel to represent either Eastman or Redmond?

A. Not that I am aware of. When I have been employed by either of those gentlemen, it was by themselves; they came by themselves.

Q. Under what circumstances and what led to Mr. Redmond's acquiring the interest of Dr. Mercer in the suit of Ames, No. 4383, of

422 the sixth district court?

A. Well, I believe, as far as I recollect the circumstances connected with his obtaining an interest in that litigation, that they were about as follows: Mr. Eastman, I think—it was certainly either Mr. Eastman or Mr. Redmond—employed me to negotiate with Doctor Mercer for the purchase of his interest in that litigation, and I waited on Judge Kennedy, who was representing Doctor Mercer, and had several interviews with him, and visited the house of Doctor Mercer in that connection, and we finally consummated an arrangement by which Doctor Mercer sold and transferred to Mr. Redmond the interest that he had in the suit, for three thousand five hundred dollars. The money was given to me to purchase that interest either by Mr. Eastman or by Mr. Red-

mond. I think it was given to me by Mr. Eastman with instructions to purchase for account of Mr. Redmond.

Q. Were you not at that time the counsel of Mr. Aymar?

423 A. Well, nominally, I suppose I was. Mr. Aymar had been for several years very much embarrassed, but I do not remember whether he had any litigation going on or not then. We had been his attorneys for a good many years.

Q. Did you have any consultation with Mr. Aymar relative to having the claim of Mercer transferred to Eastman or Redmond?

A. Well, sir, I think it is very probable that Mr. Aymar was present on those occasions when the matter was discussed.

Q. What was said on those occasions?

A. I do not remember, sir.

Q. What interest had Eastman or Redmond in making these acquisitions?

A. This I suppose I can only conjecture. There was under seizure, in the suit referred to, a considerable amount of sugars and molasses. I believe, and Doctor Mercer was willing to sell his interest in the litigation for a fixed sum, and I presume they thought they could make some money out of it. I do not know what else.

424 Q. Do you or not know whether Aymar furnished any of the moneys with which Redmond acquired it?

A. I do not know, sir; I have no reason to think that he did, but, on the contrary, I have reason to believe that he had not the ability to furnish any money at that time. I do not know, though, anything about it. I certainly never learned that he did.

Q. Did Eastman or Redmond ever acquire any other claims against Aymar except this one of Doctor Mercer?

A. And the purchase from Mr. Frank M. Ames, or, rather, the inchoate arrangement that was made, under which the sum of three thousand dollars was paid; and then I believe there was another claim. I do not recollect now in what proceeding it was, but it was some small amount that Mr. Eastman acquired.

Q. Was it also another suit in the sixth district court?

425 A. I believe there were two suits of that title. It was not that I had reference to. Independent of the suit of the same title, there was a small suit, the title of which I have forgotten, in which Mr. Eastman became the purchaser of the claim, I think.

Q. Is it not to your knowledge that whenever there was a judgment against Aymar about to be executed, Mr. Aymar would have those judgments transferred to either Eastman or Redmond?

A. I do not remember of any other transactions of that character than those I have mentioned. I believe that there were a number of judgments against Mr. Aymar that neither Mr. Eastman nor Mr. Redmond ever pretended to acquire.

Q. What were the relations existing between Aymar and Eastman and Redmond?

A. I believe they were very friendly. I do not know of any business relations existing between them.

Q. Who is Mr. Eastman?

A. Well, I only know that he is a citizen of New Orleans.

Q. Where does he live?

A. I do not know the number, but his residence is on Camp street, near St. Joseph.

426 Q. Who is Mr. Redmond?

A. Mr. Redmond was at one time a citizen of New Orleans. I

think he is living in Galveston now. The last I heard from him was when I received a letter from him about six months ago from Galveston.

Q. Relative to this claim?

A. Not that I recollect. I could probably find the letter. I will look for it if you wish, but it was of another matter. I do not recollect now what it was about.

Q. Mr. Butler, who employed Mr. Elder as a broker in this transaction?

A. I do not know, sir.

Q. Did Mr. Elder pay the three thousand dollars as a broker?

WITNESS: What three thousand dollars?

Mr. BRIGHT. To Ames.

A. I paid it myself to Judge Merrick. I did not know Mr. Elder in the transaction at all. I never had any conversation with him nor any interview with him. I communicated directly with Judge Merrick.

Q. And with whom else?

427 A. No one else that I know of except Mr. Eastman. I saw him very often, and I frequently spoke of it in the presence of Mr. Aymar and Mr. Redmond.

Q. Did you see Mr. Aymar also in reference to it?

A. I cannot say that I consulted with him in reference to it, but I know that he was aware of what transpired at several of the interviews with Judge Merrick.

Q. What part did Mr. Aymar take in this transaction?

A. I do not know that he took any part, except that he seemed to be perfectly willing that Mr. Redmond should acquire the note and mortgage.

Q. Did he do anything in furtherance of that object?

A. Well, sir, I do not know what he did in furtherance of that object.

Q. Did he show any great anxiety that Redmond should acquire that judgment?

A. Well, sir, I think he was desirous of it.

Q. Was he not the principle and busy man in the acquisition
428 of that judgment?

A. Well, I cannot say that he was particularly; he seemed to be anxious that it should be done.

Q. With you, did he not take more part in the acquisition of that judgment than Mr. Redmond himself did?

A. Yes, sir, I think he did; but Mr. Eastman was representing Mr. Redmond in many of the interviews that I had, and seemed to be on hand always when anything was to be done.

Q. Is it not a fact that you had to send for Eastman and Redmond to complete any and all of these transactions when Aymar had taken part in them?

A. I think not, sir; it is impossible for me to state who were present, because I had so many interviews, and saw those gentlemen so frequently.

Q. Mr. Redmond has been absent from this State for how many years?

A. I think possibly not more than a year he was living on Esplanade street.

Q. In June, 1876, when Mr. Gay acquired from Ames, did you
429 not claim the benefit of that purchase for some person?

A. Yes, sir.

Q. Was Mr. Redmond in town then?

A. No, sir, he was not.

Q. Did you not claim the benefit of that purchase at the instance of Mr. Aymar?

A. At the request of Mr. Eastman; I had continued to claim it for some time, as Mr. Eastman had acquired the rights of Mr. Redmond in that matter.

Q. Were you not in consultation at that time with Mr. Aymar? Was he not pressing you to claim this purchase?

A. Well, I cannot say that he was, for I always claimed it.

Q. State, then, what he did do.

A. Well, I cannot recollect that he did anything particularly.

Q. What part did he take, and how did he urge you towards it?

A. Well, I do not know that he urged me towards it particularly at all; he knew that I was doing all I could for Mr. Eastman to enforce the benefit of that transaction at that time; I suppose he was aware
430 of that; I had frequent interviews with Judge Merrick at the time.

Q. Did he not show any desire for you to claim the benefit of that purchase?

A. I think he did. He wanted Mr. Eastman, his friend, to get the benefit of it. He may have had some private reasons of his own, which I do not know anything about other than those of mere friendship.

Q. Mr. Butler, after the transfer was made to Redmond from Doctor Mercer of the mortgage note for eleven thousand dollars, is it or not to your knowledge that this note of eleven thousand dollars was pledged to a man named Miller?

A. Yes, sir.

Q. To secure a debt of Aymar?

A. I believe it was, sir. It is to my knowledge that it was pledged to Mr. Miller to secure a debt.

Q. Of Aymar?

A. Wait a moment. It was to secure a note which Redmond had given to Mr. Miller for some sixteen hundred dollars.

Q. But do you not know that that debt was the debt of Aymar?

A. I believe that Mr. Aymar owed Mr. Miller about that sum.

431 Q. And Redmond gave his note and gave the eleven thousand dollar mortgage to secure Mr. Aymar's indebtedness?

A. That is my impression, sir.

Q. Was not that indebtedness of Aymar to Miller as agent of a coal company for coal sold by the company to Aymar?

A. I have understood since the death of Mr. Miller that it was only in a representative capacity that Mr. Miller was acting. I have not seen the account filed, but I am told that on account in the succession it appears that that claim is held by some Pittsburg coal company.

Q. Can you state why, if the eleven thousand dollar note was transferred to Redmond bona fide, Redmond should use it to pay Aymar's debt?

A. I cannot. I do not know what motive induced him to do it.

Q. At that time was Eastman a man of means?

A. I do not know. He had apparently some means.

Q. Was Redmond a man of means?

A. I do not know. He dressed well.

432 Q. Was not Aymar in trouble pecuniarily?

A. Very great, sir.

Cross-examined by Mr. BARROW:

Q. You state that you received the three thousand dollars that was paid to Judge Merrick from the civil sheriff of the parish of Orleans?

A. That is my recollection.

Q. In what capacity did you receive it?

A. As the attorney of Mr. Henry P. Eastman.

Q. You state that Mr. Aymar was anxious or seemed anxious that Mr. Redmond or Mr. Eastman should acquire this judgment. Do you know whether or not there was any arrangement made between Mr. Aymar and Mr. Redmond or Mr. Eastman as to granting Aymar time on that judgment?

A. I do not remember, sir.

Redirect by Mr. BRIGHT:

Q. Mr. Butler, you collected money from the suit No. 4383, sixth district court. Who receipted to you for that money after you
433 collected it?

A. Well, I think I paid over out of that money three thousand dollars to Judge Merrick on account of this contract on behalf of Mr. Redmond, and the balance, less my fees, I turned over to him, if there was any balance.

Q. Then you did not get any receipt from your client?

A. Yes, sir; I think I did.

Q. From whom?

A. Mr. Redmond. I got a receipt for the whole of it. I would not handle the money without a receipt for it. The three thousand five hundred dollars with which the Mercer judgment was purchased—I do not know where it came from. I believe it came from Mr. Redmond, but where he got it from, or whether he owned it himself or borrowed it from Eastman, I do not know. I am very certain, as far as impressions go, that it did not come from Mr. Aymar.

Q. Well, it came from Aymar's crops. The record shows that.

434 A. No, sir; that was subsequent to the payment of the three thousand five hundred dollars. As far as I can recollect, it was long subsequent.

Q. You say you got the money from the sheriff?

A. No, sir; not that three thousand six hundred dollars mentioned there. It was the money that I paid to Judge Merrick that I got from the sheriff.

Q. Well, that was this money?

A. Certainly it was, but it was other money that acquired the interest in that sugar for Redmond. He bought the claim for Mercer. That money was handed to me either by Mr. Eastman or Mr. Redmond.

By virtue of the agreement, of which the following is a copy, I, the undersigned stenographer, did give notice to H. D. Ogden, esq., counsel for Whiting and Brown, executors of George Miller, esq., that I would take the testimony of witnesses in this case in the office of the clerk of the United States circuit court for the district of Louisiana, on
435 Friday, January twenty-sixth, 1877, at one o'clock p. m., by leaving the said notice on Wednesday, January twenty-fourth, 1877, on his desk in his office on Camp street, near the corner of Canal street, his son, C. G. Ogden, esq., informing me before the day of taking the testimony that the notice had been received.

By virtue of the same agreement I also gave notice on Wednesday, January twenty-fourth, 1877, Mess. Lacey & Butler, attorneys for William H. Aymar, that I would take the said testimony at the said time and place, by leaving the said notice at their office on Carondelet street, in the hands of their clerk.

On Friday, January twenty-sixth, 1877, at the hour of one p. m., I proceeded to take testimony of the afore-mentioned witnesses in the

presence of George L. Bright, esq., attorney for Charles E. Alter, of David Barrow, esq., attorney for E. J. Gay, and of F. N. Butler, esq., attorney for William H. Aymar. The said witnesses having been sworn before giving their testimony by Mr. Vinot, deputy clerk of the
436 *of the* United States circuit court for the district of Louisiana.

(Signed) C. W. COLTON,
Stenographer.

The agreement referred to is as follows:

FRANK M. AMES, EDWARD J. GAY, SUBROgated,
vs.
MARGARET ALLAIN AND OTHERS. } No. 6894. In equity.

We agree to take the testimony of witnesses in this case before any U. S. commissioner, clerk of the circuit court, or any stenographer, upon due notice being given to the parties. The testimony to be taken upon oral interrogatories.

New Orleans, Jan'y 20, 1876.

GEO L. BRIGHT,
Counsel for C. E. Alter.
DAVID N. BARROW,
Att'y for E. J. Gay.
H. D. OGDEN.
LACEY & BUTLER.

437 *Testimony on behalf of Charles E. Alter.*

United States circuit court.

FRANK M. AMES, ED. J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN, ET AL. } No. 6894.

Testimony taken by agreement on March 31st, 1877, by C. W. Colton, phonographer.

Geo. L. Bright, esq., for Alter.
D. N. Barrow, esq., for Gay.
O. G. Ogden, esq., for executors of Miller.

T. H. KENNEDY sworn and examined on behalf of Charles E. Alter.

By Mr. BRIGHT:

Q. You were counsel for W. N. Mercer in his suit against Eastman, No. 4383 of the docket of the sixth district court?

438 A. Yes, sir.

Q. The plaintiff's claim was transferred to Henry P. Redmond by the record?

A. I have forgotten the initials, but I think that was the name. Of course it must be, as it is there.

Q. Did you negotiate that transfer, or have anything to do with it? If yea, what?

A. I negotiated that transfer on behalf of Doctor Mercer. I was applied to by Mr. Butler, and communicated his terms to the doctor, and they were finally accepted, after a great deal of reluctance on the part of the Doctor.

Q. What were the terms?

A. I think they were three thousand dollars, as well as I can now recollect.

Q. Was that paid cash?

A. Yes, sir; cash. As well as I now remember it was paid in a check. The money was received. I did not present the check myself. I turned it over, and I never heard of it again, and of course I presume it was paid.

Q. Had Mr. Butler been retained as the attorney of Mr. W. H.
439 Aymar?

A. I understood he had, and I believe he was. There was no defence. I do not understand that he made any appearance at all on the record, but I understood that he had been consulted in the matter.

Q. Did you ever see Henry P. Redmond?

A. No, sir.

Q. Did Mr. Aymar ever call upon you?

A. I used to see Mr. Aymar very frequently, and had many conversations with him. He would come and beg off and postpone and postpone, and one thing and another. I had different interviews with him.

Q. During those interviews were Lacy and Butler acting as his counsel?

A. Well, they were never present at the interviews. My impression is that they were his attorneys all along, but I cannot state so positively.

Q. Do you know who Henry P. Redmond is?

A. No, sir; I never saw him and never heard of him before. I
440 do not know who he is now; I cannot identify him; I do not think I ever saw him to know him. That is what I mean.

Q. You never saw him, and he never paid you any money himself?

A. No, sir; not himself. I understood that this money came from him; whether it was so or not I do not know.

Q. It was a check?

A. I think it was a check.

Q. Do you know whose check it was?

A. I do not think it was signed by him, but I will not be positive about that. My impression is that the check was not signed by him; I may be entirely wrong about this, but my impression is that it was signed by Mr. Butler; I never had a word with Mr. Lacey on the subject.

Q. Did you have in your possession the note for eleven thousand dollars, which is mentioned in the suit of Mercer against Eastman?

A. I think I must have filed it in the suit, sir; it is mentioned as filed, and I must have filed it.

441 Q. Did you withdraw it?

A. I do not think I did; I do not remember.

Q. It appears to have been withdrawn, but it does not say by whom.

A. I do not remember having withdrawn it; I do not know what use I could have had for it after transferring it; I do not remember having withdrawn it, and I do not think I did.

Cross-examined by Mr. BARROW:

The act of pledge was never filed in the suit, I believe. I think that Doctor Mercer had it when he died; I may have seen it to refresh my memory as to the date when the suit was filed, but I do not remember particularly.

THOMAS S. ELDER sworn and examined on behalf of Charles E. Alter.

By Mr. BRIGHT:

Q. Do you reside in New Orleans?

442 A. I do, sir.

Q. Do you know William H. Aymar.

A. Yes, sir.

Q. Do you know Henry P. Redmond?

A. No, sir; not that I recollect of.

Q. Did Mr. Aymar ever call upon you relative to purchasing from Frank M. Ames a certain judgment? If yea, state all you know about it.

A. He requested me to call upon Judge Merrick to negotiate for the purchase of a claim of that sort in behalf of other parties.

Q. Did he mention who the other parties were?

A. No, sir.

Q. What remark did he make about it?

A. He said that he had a friend or that he knew a party who would buy the claim.

Q. Did you ever have any communication in any way with that friend or party?

A. Never.

Q. Did you ever know anybody in the transaction except Mr. Aymar?

A. No, sir.

443 Q. Did you negotiate with Judge Merrick?

A. It is so long since that I do not recollect exactly what took place. I wrote some letters to Judge Merrick. (Shown two letters dated May 8th, 1874, and May 7th, 1874, already in evidence.) These were my letters.

Q. What conclusion did you come to with Judge Merrick?

A. I do not think I had anything to do with the matter further than up to that time.

Q. Further than what is contained in these letters?

A. Yes, sir; I negotiated it up to that point, and I do not recollect having heard anything of the transaction from that day to this.

Q. You say in that letter of May seventh "I am instructed to accept the proposition." By whom were you instructed?

A. By Mr. Aymar, sir. He was particular, though, that I should understand that he was not the principal in that matter.

Q. But you never knew of any principal?

A. No, sir.

No cross-examination.

444 *Testimony on the part of Charles E. Alter.*

Circuit court of the United States, district of Louisiana.

FRANK M. AMES, EDWARD J. GAY, SUBROGATED, *vs.* MARGARET D. ALLAIN AND OTHERS. } 6894.

Testimony taken on the part of Chas. E. Alter, intervenor, under the 67th rule of practice for the courts of equity of the United States, before F. A. Woolfley, special examiner, duly appointed by the aforesaid court to take the depositions of the witnesses in the above entitled cause.

NEW ORLEANS, *February 13th*, 1878.

Present, Geo. L. Bright, for Chas. E. Alter, intervenor; David N.

Barrow, for complainant; Charles G. Ogden, for Miller's executors and the Grand Lake Coal Company.

FRANK N. BUTLER, a witness produced, sworn, and examined on behalf of Charles E. Alter, intervenor, says:

445 Mr. Butler, in obedience to a subpœna duces tecum, produced the account book of Lacey and Butler, account of H. P. Redmond. (Document offered in evidence and marked A.)

F. M. AMES, E. J. GAY, SUBROGATED, vs. M. D. ALLAIN ET AL. } No. 6894.

Exhibit A, referred to by F. N. Butler, in his deposition and offered on behalf of Chas. E. Alter, Feb'y 13th, 1878. Signed, F. A. Woolfley, special examiner.

[Folio 290.] HENRY P. REDMOND.

1874.					1874.			
May	19	To F. N. Butler, am't paid Wm. N. Mercer	$3,500 00		May	16	By Frank N. Butler	3,500 00
"	23	" prof. services in securing transfer in suits 4383 6th dist. court & 4479 sixth dist. court & for collecting $2,498.76 under fi. fa. in suit 4479, 6th dist. court	500 00		"	23	" " " "	2,498 76
"	"	" am't paid your order favor Wm. H. Aymar	519 46		"	28	" " " "	600 00
"	25	" F. N. Butler, am't p'd your order favor F. Eastman	1,400 00		"	30	" " " "	50 00
"	28	" " " " " " " " H. D. Ogden	75 00		June	2	" " " "	3,608 13
"	29	" " " " " " J. W. Burbridge & Co., as per order	644 30		"	11	" " " "	208 00
"	30	" " " " " " F. P. Poche's fee	75 00		July	8	" balance	14 69
June	2	" prof. services 5 p. c. commissions on $3,608.13	180 40					
"	3	" Frank N. Butler for amount paid E. T. Merrick, att'y for F. Ames, on acc't purchase price of the 1st mortgage of $11,000 on Australia Plantation	3,000 00					
"	3	" F. N. Butler, am't paid you	53 45					
"	4	" " " " " " costs Miller vs. Aymar	39 30					
"	5	" " " " " " J. Bowling for Aymar's note	234 40					
"	16	" " " " " " H. M. Farrot, att'y's fee	50 00					
July	6	" " " " " " J. Bowling for Aymar note	208 27					
				10,479 58				$10,479 58
July	8	To balance brought down	$14 69					

Q. Mr. Butler, from whom did you receive the credit item of sixteen hundred and thirty-five dollars ($1,635.00)?

A. I received that money from Frederick Eastman. He requested me to invest it for account of H. P. Redmond in the purchase of a note at that time held by Doctor W. H. Mercier. The two suits, if I recollect aright, was then pending in the sixth district court, numbers 4383 and 4479, which I did as directed.

Q. Where did Eastman get the thirty-five hundred dollars?

A. I have no idea, sir; I say I have no idea except the fact that he requested me to invest the money for the account of H. P. Redmond.

Q. Was Redmond aware of this transaction?

448 A. I think so, sir.

Q. Was Aymar aware of this transaction?

A. Yes, sir.

Q. Was it not truly an amount that came from W. H Aymar?

A. I am almost certain that Mr. Aymar could not possibly have had that amount of money at that time from my knowledge of his impecunious condition at that time. If it ever come from him or any part of it, I have not the faintest knowledge of the fact.

Q. Was Redmond a clerk of Mr. Aymar then?

A. Not that I am aware of. I don't think Mr. Aymar was doing any business at that time, except in connection with this plantation in the parish of St. James. What he was doing with it, I don't know. I think he was making some little rice crop of it, or something of that kind.

Q. Why did you take out of it that amount of five hundred dollars?

A. For the services in the suit of Mercer against Eastman and

449 Aymar. I did not take it out of that amount of thirty-five hundred dollars. I did not take anything out of the thirty-five hundred dollars. I paid the whole thirty-five hundred dollars over to Dr. Mercier, and five hundred dollars which you see charged here was charged for professional services of Lacey and Butler in attending to that transaction and collecting some twenty-four hundred and ninety-eight dollars and seventy-six cents, collected under the writs or one of the writs issued from the sixth district court, in one of the suits which I have referred to.

Q. Were not the services for which the five hundred dollars are charged rendered to Aymar?

A. Not that I am aware of. I did not suppose that I had acted for him at all.

Q. Were they rendered to Redmond?

A. They were rendered at the request of Mr. Eastman. He

450 desired me to make the transaction in the name of H. P. Redmond, on his account. I did not see Mr. Redmond at that time.

Q. From whom did you receive twenty-four hundred and ninety-eight $\frac{76}{100}$ dollars ($2,498.76)?

A. From the sheriff of the parish of Orleans.

Q. In which one of the suits?

A. I don't know which; you will see it there mentioned in the account (marked A).

Q. From whom did you get the credit of six hundred dollars?

A. I think it was handed to me by Mr. Eastman. But I am not certain.

Q. If it was handed to you by Mr. Eastman, why did you put it to the credit of Mr. Redmond?

A. Simply because I was requested to. The transaction referred to were taken for the account of Mr. Henry P. Redmond.

Q. From whom did you get the item credit of thirty-six hundred and eighteen dollars and thirty-six cents?

451 A. From the sheriff of the parish of Orleans, in one of those two suits. There were two writs, and one of the writs, I think, was settled. The other one was only partly paid by the property that was seized under it. It has been some time since I have given any attention to this matter, and my memory is not perfectly fresh as to which of the suits I derived the different amounts of twenty-four hundred and ninety-eight dollars and seventy-six cents, or thirty six hundred and eighteen dollars and thirty-six cents.

Q. Were they not both from the suit against Aymar?

A. They were both from the suits, if I recollect aright, from the suits of Doctor Merceir against Aymar. They were those numbers on the ledger there.

Q. Which were transferred to Mr. Redmond, were they not?

A. Which were transferred to Mr. Redmond by Doctor Mercier.

Q. Were not those two sums the proceeds of the property seized as the property of Mr. Aymar?

452 A. There were the proceeds of sugars which were seized on the Australia plantation, which was at that time owned by W. H. Aymar, and I suppose they were seized as the property of W. H. Aymar.

Q. Where did you get item two hundred and eight dollars—from whom?

A. If my recollection served me aright it was handed to me by Mr. Eastman, with the request that I should invest it for the account of H. P. Redmond.

Q. Was not Redmond in this account really Eastman?

A. That has been my impression for a long time, sir.

Q. Was not Redmond really Aymar?

A. I don't think so, sir; never had any reason to believe that he was.

Q. Was Redmond at any time a clerk of Aymar's?

A. Not that I am aware of. He might have been, but I am not aware of it.

Q. Was Mr. Eastman a clerk for Aymar?

A. He was, I believe, a good many years ago. He was not at this 453 time, for, as I said before, Mr. Aymar was not doing any business in the city of New Orleans, that I had any knowledge of. I am quite sure that he was not engaged in anything except the cultivation of a small crop in the parish of St. James.

(Documents marked Butler one, offered in evidence; documents marked Butler two, offered in evidence by Mr. Bright.)

Q. This seventy-five dollars paid to H. D. Ogden?

A. Here is the receipt, sir.

(Documents marked Butler 3 & 4 offered in evidence by Mr. Bright, and documents marked Butler 5 and 6.)

Q. Why did you charge six hundred and forty-four dollars & thirty-six cents to Redmond?

A. Because I received his instructions to pay it out.

Q. Had Aymar any connection with this item?

A. Well, sir, I really don't know whether he had or not. There 454 was, at the time of the seizure in the parish of Baton Rouge, from two or three—several seizures—in sugars. I think one was for the Frazer. My impression is that this six hundred and forty-four dollars and thirty six cents ($644.36) is for the Frazer. In order to get the sugar released which came down here, there was some arrangement

by which he, Frazer, would be satisfied, and my impression is that that draft was to cover that amount. I am not positive about it. I paid J. W. Burbridge & Co. that amount.

Q. Now, item of one hundred and eighty dollars and forty cents ($180.40) debit?

A. That is five per cent., I think, of thirty-six hundred and eighteen dollars and 36 cents fee which we charged for collecting that amount under the writ.

Q. Was not that writ the suit of Mercier vs. Aymar?

A. Well, as far as I can recollect, that was the title of it. I have not seen it for so long that I cannot be positive of it.

455 Q. Was it not for services rendered to Aymar?

A. It was not.

Q. Debit item three thousand dollars?

A. I paid that amount to Judge Merrick. It was a ccheck, Butler 7. I paid that amount to Judge Merrick on account—cash payment for the agreed purchase of the Ames note; it was then, I think, in the suit in this court. The contract with Judge Merrick was that I was to have for the account of my client that note of eight thousand ($8,000.00), three thousand dollars ($3,000.00) in cash, and five thousand was to be paid in the following fall, I think about the 1st of December. This three thousand dollars was the payment of the cash portion of that contract.

Q. Did Redmond know when you made this payment?

A. Certainly, he did, sir. I am quite sure he did. I was instructed to make the purchase by Mr. Eastman for the account of Mr. Redmond.

456 Q. But did Mr. Redmond know of it?

A. As far as I know, he did; but I did not communicate with him directly upon the subject.

(Documents marked Butler 6 & 7 offered in evidence.)

Q. Item thirty-nine dollars and thirty cents ($39.30), Miller against Aymar. Why did you charge this item against Redmond?

A. For the reason that when Redmond acquired a transfer from Doctor Merceir there was a claim, I think a sequestration, upon this sugar in the hands of the sheriff, and it was under the arrangement that the sequestration should be raised in favor of my client; that the thirty-nine dollars and thirty cents was to be paid by my client, and in addition to that Mr. Miller, counsel, had to be paid, and the amount of seventy-eight dollars paid Mr. Ogden. I think it was for Mr. Ogden's fees as attorney for Miller at that time.

457 Q. Now, item two hundred and thirty-four dollars and forty cents ($234.40), Aymar's note?

A. That was for this note, sir; and that is the note of which that is a copy of it. It was Mr. Bowling's receipt; it went to purchase that note, as it appears there on the receipt.

(Documents marked Butler 8 and 9 and Butler 10 and 11 offered in evidence.)

Q. Mr. Butler, why did you credit this amount to Frank N. Butler?

A. Simply because I received it personally. If Mr. Lacey had received the money I would have said by George S. Lacey, but I received it and charged myself with it.

Q. Did you say from whom you received it?

A. I might, but I am not a very expert book-keeper. I do not keep books for the purpose of doing more than show a correct transaction.

Q. You do not keep by double entry?

A. No, sir; not by double entry.

Q. Have you got the letter which we called for?

458 A. I don't know that I ever received a letter from Mr. Redmond in my life. There was a letter which I think I did receive at one time from Mr. Redmond from Galveston in connection with compromising an indebtedness that was outstanding by him that was held by the executors of Miller, but, upon further consideration of the matter, I think that that letter was not addressed to me, but was simply forwarded through me to the representative of the estate of Miller, and I think I handed it over to him because I cannot find any trace of it amongst my correspondence.

Q. Did not Mr. Aymar control this amount?

A. In which way?

Q. In general in every way.

A. I don't know that he did. Mr. Aymar was cognizant of what was being done. But my transactions were had under the directions of Mr. Eastman, according to his instructions for the account of H. P. Redmond.

Q. Do you not know that H. P. Redmond had no interest in it?

459 A. I don't think that he had any material interest. I don't think he *he* had any real interest in it. I think it was put in the name of Mr. Redmond, for the reason that at that time there was a judgment against Mr. Eastman. It was a judgment against him as accommodation endorser of Mr. Aymar, and he did not care to pay it. He did not want to pay it, and that further he had no assets standing on his account. I believe that was the motive.

Q. Mr. Butler, were you not the attorney of Mr. Aymar?

A. Yes, sir; my firm have been his attorneys for a long time, but we have done but little business for him in the last few years.

Q. Were you not the attorney for Eastman?

A. Yes, sir; and the attorney for Redmond.

Q. Were you not the attorney for Walsh?

A. Yes, sir.

Q. Were you not the attorney for E. J. Gay?

A. I don't think I am, sir; unless I am from the fact that I am the attorney of Mr. Walsh. Mr. Walsh has explained that matter in his testimony more fully than I can.

By Mr. BARROW:

460 Q. The three thousand dollars said to be paid to Judge Merrick; that is as far as any bargain was attempted, wasn't it?

A. Yes, sir; nothing further was done.

A. Nothing was done.

Q. Were there not, afterwards, other proposition made by Redmond, or by you or by others, representing Redmond to change the bargain to make a difference?

A. Yes, sir.

By Mr. OGDEN:

Q. Mr. Butler, in regard to this thirty-five hundred dollars that you stated was given to you by Mr. Eastman to purchase the note? What note was there?

A. It was a note for eleven thousand dollars which was held by Doctor Mercier either as collateral—that is, it was held at the time by him as collateral to secure the payment of either one or two other notes that he held that time, and which were in judgment in the sixth district court.

Q. Do you know what became of that note—was it purchased?

461 Do you know whether or not the note was subsequently transferred?

A. Yes, sir; I think that was the the note that was given by Mr. Redmond as collateral to secure his note which Mr. Miller held. A note for about sixteen hundred dollars—this was given as collateral to secure that note.

Q. By Mr. Redmond to Mr. Miller?

A. Yes, sir.

Documents marked Butler 12, 13, & 14 offered in evidence.

Exhibit A.—Filed Feb'y 28th, 1878. (*See pages* 446 *and* 447.)

Copies of Exhibits Butler 1 to 14, referred to by Frank N. Butler in his deposition and offered on behalf of Charles E. Alter, February 13th, 1878.—Filed February 28th, 1878.

Copy of Exhibit Butler one.

F. N. BUTLER, Esq.

DEAR SIR: Please pay Wm. H. Aymar five hundred and nineteen $\frac{46}{100}$ dollars out of proceeds of sugars realized in suit of William
462 N. Mercer, H. P. Redmond, subrogee, vs. Wm. H. Aymar, No. 4479, sixth district court.

New Orleans, May 23d, 1874.

(Signed) H. P. REDMOND.

A true copy of the original.

(Signed) F. A. WOOLFLEY,
Special Examiner.

Copy of Exhibit Butler two.

Received from F. N. Butler five hundred and nineteen $\frac{46}{100}$ dollars for account H. P. Redmond.

New Orleans, May 23d, 1874.

(Signed) WILLIAM H. AYMAR.

A true copy of the original.

(Signed) F. A. WOOLFLEY,
Special Examiner.

Copy of Exhibit Butler 3.

F. N. BUTLER:

DEAR SIR: Please pay Mr. Frederick Eastman fourteen hundred dollars out of proceeds of sugars seized and sold in suit of Wm. N. Mercer, H. P. Redmond, subrogee, vs. W. H. Aymar, No. 4479, 6th district court.

(Signed) H. P. REDMOND.

463 New Orleans, May 25th, 1874.

A true copy of the original.

F. A. WOOLFLEY,
Special Examiner.

Copy of Exhibit Butler 4.

$1,400.00.

Received, New Orleans, May 25th, 1874, from Frank N. Butler, esq., fourteen hundred dollars for account of H. P. Redmond.

(Signed) F. EASTMAN.

A true copy of the original.

(Signed) F. A. WOOLFLEY,
Special Examiner.

Copy of Exhibit Butler 5.

Rec'd, New Orleans, May 28th, 1874, from F. N. Butler, esq., att'y for H. P. Redmond, seventy-five dollars for services in suit of G. F. Miller vs. Wm. H. Aymar, 6th dist. court of this parish.

$75.00.

(Signed) H. D. OGDEN,
Per CHAS. G. OGDEN.

A true copy of the original.

(Signed) F. A. WOOLFLEY,
Special Examiner.

464 *Copy of Exhibit Butler 6.*

Received, N. Orleans, May 29, 1874, of Mr. Frank N. Butler, six hundred and forty-four $\frac{30}{100}$ dollars for account and credit of H. M. Farrot, esq.

(Signed) J. W. BURBRIDGE & CO.,
P'r T. D. HARRIS.

A true copy of the original.

(Signed) F. A. WOOLFLEY,
Special Examiner.

Copy of Exhibit Butler 7.

No. 70.] NEW ORLEAS, *June 3rd*, 1874.

Canal Bank pay to the order of Hon. E. T. Merrick three thousand $\frac{00}{100}$ dollars.

$3,000\frac{00}{100}$.

(Signed) FRANK N. BUTLER.

[F. A. B. June 3, 1874.]

(Across the face in red:) Paid.

(Endorsed:)
Pay to Mess. Race, Foster & E. T. Merrick.
(Signed) E. T. MERRICK.
(Signed) RACE, FOSTER & E. T. MERRICK,

(In red, circle:) New Orleans National Bank.

A true copy of the original.

(Signed) F. A. WOOLFLEY,
Special Examiner.

465 *Copy of Exhibit Butler* 8.

$234.40.] NEW ORLEANS, *June 5th*, 1874.

Received from Frank N. Butler, attorney for H. P. Redmond, the sum of two hundred and thirty-four $\frac{40}{100}$ dollars, for the following described note:

$200.00.] NEW ORLEANS, *28th March*, 1872.

Four months after date I promise to pay to the order of myself two hundred $\frac{00}{100}$ dollars, value received, with interest at the rate of eight per cent. annum from maturity until paid.

(Signed) WILLIAM H. AYMAR.

(Endorsed:)

WILLIAM H. AYMAR.

(Signed) J. BRULING.

(Endorsed:)

NEW ORLEANS, *July 10th*, 1875.

For a valuable consideration I hereby transfer, assign, & convey to Frederick Eastman all my right, title, and interest in and to the within described note.

(Signed) H. P. REDMOND.

A true copy of the original.

(Signed) F. A. WOOLFLEY,
Special Examiner.

466 *Copy of Exhibit Butler* 9.

Received New Orleans June 4th, 1874, from F. N. Butler, esq., att'y for H. P. Redmond, thirty-nine $\frac{30}{100}$ dollars, costs and advances paid by Miller in suit of G. F. Miller vs. W. H. Aymar, sixth district court for this parish.

$39 $\frac{30}{100}$.

(Signed) H. D. OGDEN,
P' CHAS. G. OGDEN.

A true copy of the original.

(Signed) F. A. WOOLFLEY,
Special Examiner.

Copy of Exhibit Butler 10.

76386.

50.00.] BATON ROUGE, *6th June*, 1874,

At sight please pay to my own order fifty dollars for att'y's fees rendered in the case of Dr. Mercer vs. W. H. Aymar, in West Baton Rouge.

Respectfully,

(Signed) H. M. FARROT.

Messrs. LACEY & BUTLER,
78 *Camp St., New Orleans, La.*

(In circle, in red:) Pike, Brother & Co., New Orleans.

(Endorsed:

(Signed) H. M. FARROT.

Pay to the order of Pike, Brother & Co.
A true copy of the original.
(Signed) F. A. WOOLFLEY,
Special Examiner.

467 *Copy of Exhibit Butler* 11.

District court par. St. James.

GEO. P. MILLER
vs.
W. H. AYMAR. } No.

75\frac{00}{100}$.

Received New Orleans May 30th, 1874, from F. N. Butler, attorney for H. P. Redmond, seventy-five $\frac{00}{100}$ dollars, to be appropriated to the discharge of F. P. Poché's fee in the above entitled suit.
(Signed) H. D. OGDEN.

A true copy of the original.
(Signed) E. A. WOOLFLEY,
Special Examiner.

Copy of Exhibit Butler 12.

THE STATE OF LOUISIANA:

Sixth district court for the parish of Orleans.

GEO. F. MILLER
vs.
WM. H. AYMAR. } No. 6144.

I hereby certify that the clerk's costs in this case amount to nine $\frac{30}{100}$ dollars.
Clerk's office, this April 27th, 1874.
(Signed) F. WALL,
D'y Clerk.
$9.30. H. D. OGDEN,
Attorney.

NEW ORLEANS, *April 28th*, 1874.

Received payment.

(Signed) JNO. J. O'BRIEN,
Clerk.

A true copy of the original.
(Signed) F. A. WOOLFLEY,
Special Master.

468 *Copy of Exhibit Butler* 13.— , *Attorney.*

6 district court for the parish of Orleans.

W. N. MERCER, REDMOND, SUBROGATED,
vs.
T. EASTMAN & AL. } No. 4383.

I hereby certify that the sheriff's fees in this case amount to fifteen $\frac{25}{100}$ dollars.

_____,
Deputy Sheriff.

New Orleans, June 2nd, 1874.

Received payment N. O., June 2d, 1874.
(Signed) J. G. BROWN,
Cash'r.

A true copy of the original.
(Signed) F. A. WOOLFLEY,
Special Examiner.

Copy of Exhibit Butler 14.

H. D. Ogden, attorney.

6th district court for the parish of Orleans.

GEO. F. MILLER
vs.
W. H. AYMAR. } No. 6144.

I hereby certify that the sheriff's fees in this case amount to fifty-two $\frac{50}{100}$ dollars.
(Signed) JNO. L. NEWMAN,
Deputy Sheriff.

New Orleans, April 27th, 1874.
Harper.

Received payment N. O., April 28th, 1874.
(Signed) J. G. BROWN,
Cash'r.

A true copy of the original.
469 (Signed) F. A. WOOLFLEY,
Special Examiner.

DISTRICT OF LOUISIANA, *ss:*

I hereby certify the foregoing to be true and correct copies of the Exhibits Butler 1 to Butler 14, the originals having been exhibited by Frank N. Butler and referred to in his deposition in the case of F. M. Ames, E. J. Gay, subrogated, vs. M. D. Allain et als. No. 6894. U. S. circuit court, district of Louisiana. February 13, 1878.
(Signed) F. A. WOOLFLEY,
Special Examiner.

FREDERICK EASTMAN sworn.

Direct examination by Mr. BRIGHT:

Q. Were you a clerk of Mr. Aymar at any time?

A. I was a clerk at one time for Mr. Aymar.
Q. From what time to what time?
A. Well, I think from about 1864 to about 1869.
Q. Was Redmond a clerk of Eastman?
470 A. He was.
Q. Was he also a clerk of Aymar?
A. No, sir; he never was a clerk of Aymar.
Q. What was your business when he was your clerk?
A. Cotton-press business.
Q. Before you, did not Mr. Aymar have that cotton-press?
A. Yes, sir; he was the owner of that cotton-press.
Q. You were his clerk then?
A. Yes, sir; I was his clerk when he owned the cotton press.
Q. He made a lease of that press to you then?
A. Yes, sir.
Q. When you were his clerk?
A. No, sir; I left his employ.
Q. Then Redmond continued under you?
A. I was in one press, and I was in another one afterwards; both of them belonged to Mr. Aymar at that time.
Q. Mr. Aymar put the presses in your name?
A. No, sir, not in my name; I rented the presses as the lessee.
Q. You leased from Aymar, didn't you?
471 A. I leased from Aymar.
Q. What was the object of Aymar leasing to his clerk?
A. I was not his clerk at the time.
Q. You were before?
A. I was before.
Q. Well, what was the object of Mr. Aymar leasing to his clerk; you gave him your notes for his rent?
A. Yes, sir.
Q. Have you ever paid these notes?
A. Paid some; some I did not.
Q. How much did you pay?
A. Oh, various times; I leased the press from him for several years.
Q. Aint it true that you did not pay the greatest portion of them?
A. No, it is not; I paid the greater portion of them. There is only one year I did not pay; part of the year.
Q. Where were your notes when you paid them?
A. Mr. Henry Roberts had some of them; some notes were held by the banks at different times.
Q. Was Aymar in embarrassed circumstances when he leased you the cotton press?
472 A. Not when he first leased me the press he was not.
Q. He has now become embarrassed?
A. Yes, sir.
Q. Is it not true that you have on one or more than one occasion been used by Mr. Aymar for his protection against his creditors?
A. No, sir.
Q. It is not true?
A. No.
Q. Did it not so happen in the suit of Mercier vs. Aymar in the sixth district court?
A. There was a suit against me also in that court. Mr. Mercier had payment against me also, or in one of the courts, I don't remember

which now, some four or five years ago. So many things have transpired since that time, I forget now which court it was in.

Q. I will ask you again whether it is not true that Aymar used you in that suit for his protection against his creditors?

A. Not at all.

Q. Did you not become subrogated to the rights of Dr. Mercier?

473 A. I did; paid for it.

Q. You say one suit? Did not you become subrogated to the rights of Doctor Mercier in a second suit?

A. In the suit that he subrogated me; it was the note. I received my own notes & also the notes of the Australia plantation, which I said, I think, thirty-five hundred dollars for, to Mr. Mercier, and that was subrogated to Mr. Redmond.

Q. Give us a statement of every suit in which Aymar was a party to which you afterwards became subrogated?

A. I don't remember of any suit except that of Doctor Mercier, and that was not subrogated to me but to Mr. Redmond. Mr. Redmond acted for me.

Q. After having received the moneys from the property of Aymar, did you not use them to buy the debts of Aymar?

A. I did not.

Q. Did you not so use them in the suit of Miller's executors against Aymar?

A. Mr. Miller held a note of mine. I think it was for fifteen

474 hundred and odd dollars, if I remember aright. He gave Mr. Miller this note that I have received from Doctor Mercier and Mr. Redmond's note—gave Mr. Redmond's note and this note from the Australia plantation as a collateral.

Q. Was not your indebtedness to Miller's executors the indebtedness of Aymar?

A. Well, the indebtedness was Aymar's, but I gave my note to Mr. Miller for fifteen hundred and odd dollars, as I told you, a year or two before, and Mr. Miller held that note of mine.

Q. Did you ever give Frank N. Butler any money?

A. I did.

Q. How much?

A. I think it was thirty-five hundred dollars.

Q. Where did you get this thirty-five hundred dollars?

A. I took it out of my business.

Q. What business were you then in?

A. Cotton-press business.

Q. Did you draw a check for it?

A. I don't remember now whether it was a check or money I gave him; I think it was money though.

475 Q. What did you direct him to do with the thirty-five hundred dollars?

A. I directed him to buy a note that Doctor Mercier held and also a judgment against Aymar, I think, and a judgment against myself, and the notes also that Doctor Mercier held of mine as collaterals.

Q. What were the notes that Mercier held?

A. They were rent notes.

Q. Whose rent notes?

A. They were my own rent notes that I had given for rent.

Q. Were there other notes?

A. I think not of mine. Yes, sir, there were other notes; this note of the Australia plantation.

Q. How much was it for?
A. I believe eleven thousand dollars.
Q. How do you account for yourself buying a judgment against yourself, or buying a note against yourself, or a claim against yourself?
A. Won't a person want to buy a judgment against themselves? Doctor Mercier had a judgment against me, and I wished also to get these notes of mine he held.
Q. You are the maker of these notes?
476 A. Yes, sir.
Q. Then you bought that judgment that was against you?
A. By that arrangement I settled that judgment.
Q. After you acquired that judgment did you collect any moneys under it?
A. Yes, sir.
Q. From whom?
A. I collected some sugars, I think, from Australia Plantation.
Q. Were they not the sugars of Aymar?
A. They were sugars from the Australia Plantation.
Q. Were they not the sugars of Aymar?
A. Well, they were from Aymar Plantation.
Q. Why did you buy the judgment in the name of Redmond?
A. Because there was a judgment against myself.
Q. What was your object?
A. For buying the judgment?
Q. In the name of Redmond?
A. I say there was a judgment against myself, I could not hold it in my own name.
Q. It was, then, to cover your property?
A. Yes, sir.
Q. Did you not also intend to cover Aymar's property?
477 A. I did not; I wished to cover myself.
Q. Did Aymar ask you to buy that judgment?
A. I think he told me. I think it was Mr. Aymar that told me about the judgment, in fact I knew about the judgment myself. I wished to get the judgment that Doctor Mercier had; the judgment against myself; that was one of the principal reasons, and to get the note he had of mine.
Q. Did you owe those notes upon which Mercier sued you?
A. Well, Doctor Mercier held them against me.
Q. Did you owe them?
A. Well, I don't know exactly what you mean by owing them. I suppose a person owes a note if there name is attached to it.
Q. You have told us that you gave those notes for rent?
A. They were rent notes, I said.
Q. Then did you owe them?
A. I suppose I owed them, of course.
Q. Is it not true that you did not owe them, and that it was
478 only a simulated lease made to you by Aymar?
A. I always leased the property from Aymar.
Q. I ask you whether those papers and that lease and the notes were not all a simulation?
A. No, sir; I think not.
Q. Why do you say you think not instead of saying positively, No?
A. Well, he has had so many transactions that I do not remember exactly about them both, Mr. Aymar and myself. I have given my rent notes for many years, and so many years have transpired now, I have had

so many notes to take up in the mean time, that I nearly forget about the transaction now, all the minutias of the transaction, the particulars about it.

Q. You say you got the thirty-five hundred dollars from your business?

A. Yes, sir.

Q. Was it not really Aymar's business?

A. It was not Aymar's business.

Q. In what book did you charge the thirty-five hundred dollars when you took it out of your business?

479 A. I charged it in the book I kept at that time.

Q. What did you call that book?

A. I charged it in the ledger.

Q. To whom did you charge it?

A. I don't remember now, but I think I charged it to myself. I think in the regular business books of the press.

Q. Then I understand you charged it to yourself?

A. Yes, sir.

Q. Where is that ledger?

A. I don't know where they are now.

Q. Where did you see it last.

A. I have not seen it for some years?

Q. What became of it?

A. I don't know what became of all my books after I gave up business.

Q. Did you not take your books with you when gave up your business?

A. I have been travelling about a good deal in the last two or three years, and I did not take my books with me. I had no use for them.

Q. Did you destroy them?

480 A. I think they were destroyed; I didn't pay much attention to it.

Q. You think they were destroyed; what gives you that idea?

A. Well, I don't know exactly what became of the books; I had a large quantity of books and had no place to keep them.

Q. Who was your book-keeper then?

A. I kept the book myself.

Q. Did you take a receipt for the thirty-five hundred dollars when you gave it to Mr. Butler?

A. I don't remember.

Q. Did you negotiate the transaction yourself?

A. Mr. Butler negotiated the transaction.

Q. Were you then a man of means?

A. Not of very large means; I had a good deal of money; I paid Mr. Aymar. I loaned Wm. Aymar at various times a great deal of money. He had the greater part of my money.

Q. Where is your account against Aymar?

A. I have not kept any lately—any account against Aymar.

Q. Where are those you kept formerly?

A. I kept them in my books.

Q. Where are those books?

A. I have none now. I merely kept a small memorandum book of the amounts I loaned Aymar.

481 Q. Well, where are those memorandum books?

A. Well, I don't know. I have none of them now. It goes over for many years. I loaned him money at various times and various sums.

Q. Was he indebted to you before you made this thirty-four hundred dollar transaction?

A. He was.

Q. Tell us what was the inducement to make the thirty-five hundred dollar transaction?

A. The inducement was Doctor Mercier held my notes and held a judgment against me, and I wished to get the judgment and get my notes that Doctor Mercier held, and I also wanted to get hold of the note of the Australia plantation.

Q. For collateral?

A. For collateral.

Q. But that did not belong to you?

A. It did not belong to me, but Mr. Aymar owed me a great deal of money, and I wished to get some of it back if I could.

Q. How were you to get it back?

A. Well, I supposed if I got that note from Doctor Mercier, the
482 mortgage note on this Australian plantation, I could get it back.

Q. You got it then?

A. I did.

Q. Aint it true that you then at Aymar's request pledged it to Miller for Aymar's debt?

A. I will have to say yes to that. It was Aymar's debt, but Mr. Miller held a note for the amount of fifteen hundred and odd dollars. I think it was for some coal that Mr. Aymar bought, and I gave him my note, and Mr. Miller held that note of mine.

Q. How do you account for these transactions had with Aymar whereby you were continually giving your obligations for Aymar's debt?

A. These obligations were given before Mr. Aymar got into those difficulties, or about the time. I was not aware that he was in such difficulties as he was in.

Q. Have you had such transactions since?

A. No; not since, I have not.

Q. Did you know Mr. Walsh?

A. I have seen Mr. Walsh.

483 Q. Where?

A. At Mr. Gay's office.

Q. Did you go to Gay's office?

A. Yes, sir; I did.

Q. Who sent for you?

A. I went with Mr. Butler; I don't remember of anybody sending for me.

Q. What did you do in that office?

A. I transferred the interest I had in a note called the Ames note on that same plantation—the Australia plantation.

Q. To whom did you make the transfer?

A. To Mr. Gay—it was not Mr. Gay; to Mr. Walsh, I mean.

Q. Who paid you for it?

A. Mr. Walsh gave me the money.

Q. Did it not come out of Mr. Gay's chest?

A. I don't know what chest it came out of *it*.

Q. Didn't you see him get it out of Mr. Gay's chest?

A. I did not.

Q. How much was it?

A. I think it was a thousand dollars.

Q. Are you sure of it?

A. I cannot say; I don't remember.
484 Q. Did you sign any paper for it?
A. I did.
Q. Who had you to negotiate that for you?
A. Mr. Butler negotiated it.
Q. Did you have anything to do with Mr. Gay?
A. Mr. Butler made all the arrangements.
Q. Were they made before you were aware of it?
Q. No, sir; I told Mr. Butler to make the arrangements.
Q. You told Mr. Butler to make the arrangements?
A. I did.
Q. What was that note you transferred to Gay?
A. I owned an interest in the note, or it was a note that Ames held against the Australia plantation.
Q. What was the amount of the note?
A. I think it was eleven thousand dollars.
Q. By whom was it made?
A. I think it was made by Aymar.
Q. How many months after date?
A. I don't remember.
Q. Did you ever have possession of that note?
485 A. I never had.
Q. Who had?
A. Judge Merrick, I think, had possession of it.
Q. Did you negotiate with Judge Merrick?
A. No, sir; Mr. Butler mad' the negotiations.
Q. Did Aymar have anything to do with the negotiations?
A. I don't know whether he did or not.
Q. Did anybody else have anything to do with the negotiations with Judge Merrick?
A. Not as I am aware of. Mr. Butler made all the arrangements for me.
Q. Did you ever employ anybody else?
A. Never did, except Mr. Butler.
Q. Did you ever employ any broker to negotiate for you?
A. No, sir; I did not.
Q. Were you aware of a broker negotiating for you?
A. No, sir.
Q. Did you know Mr. Thomas S. Elder?
A. Yes, sir.
486 Q. Did you ever employ him to negotiate for you?
A. I never did that I remember of.
Q. Did you ever pay anything upon that negotiation?
A. Yes, sir; I think some three thousand dollars.
Q. Where did you get this three thousand dollars?
A. This three thousand dollars was obtained from the transaction with Mercier.
Q. In what place were they when they were obtained?
A. I think they were the proceeds of the sugars that was obtained at the time of that arrangement with Mercier.
Q. By what process of reasoning do you make this three thousand dollars yours?
A. Why, I bought the judgment and the papers, and also Doctor Mercier's claim against those sugars.
Q. But did you not owe the debt?
A. Owe what debt?

Q. Mercier's debt.

487 A. I don't understand you. I owed Mercier for those notes which he held of mine which he turned over to me, and also this note of the Australia plantation, and also the sugars.

Q. But when you bought Mercier's debt against yourself did you *council* it?

A. The debt against myself was cancelled.

Q. Well, then, what other debt existed?

A. No other debt existed of Mercier of mine; and I also paid Mr. Aymar's debt—Mercier against Aymar.

Q. But is it not true that that debt claimed by Mercier was for the notes made by you and which you had given to Aymar for rent?

A. That was part of the transaction.

Q. What was the other part?

A. The other part was the sugars that he held, and also a note on the Australia plantation.

Q. What was the conversation you had relative to the transfer that you made to Walsh?

A. The conversation?

488 Q. Yes, sir.

A. Who with?

Q. With every body.

A. Well, I had a conversation with Mr. Butler.

Q. Well, tell us what that was.

A. I heard that Mr. Gay wished to buy or would buy my interest in that note of Ames, and I told him (Mr. Butler) he could make the arrangement to sell it to Gay, or to any party—that I wished to dispose of my interest in that note.

(Mr. Barrow objects to any conversation as far as Mr. Gay is concerned as hearsay, and from his not being present he is not bound by them.)

Q. Have you anything more to say?

A. No, sir.

Q. Mr. Eastman, have you ever loaned your name to Mr. Aymar for the purpose of covering any transaction whatever?

A. No; I have not.

Q. How do you account for your name appearing so frequently

489 as the transferee of claims against Aymar?

A. I don't know that my name does appear as the transferee of any claims of Aymar's.

Q. You were friendly and intimate with him?

A. I have been for many years.

Q. Was it consistant with your friendship and intimacy to purchase claims against him.

A. The only claims I ever purchased against him was to try and protect myself.

Q. Have you succeeded in protecting yourself?

A. I have not.

Q. I find, sir, that on one occasion you bought Aymar's note from Bowling, did you not?

A. Yes, sir; I think I did.

Q. And that you gave the full price, principal and interest, did you not?

A. Yes, sir.

Q. What interest had you in doing that?

A. I did for friendship to Mr. Aymar.

490 Q. In whose name did you make that acquisition?
A. I think it was Redmond.
Q. Did you ask Redmond to permit you to do that?
A. I think I did.

By Mr. OGDEN:

Q. Mr. Eastman, in regard to the thirty-five hundred dollars ($3,500) which you state that you advanced to Mr. Redmond to purchase this mortgage note held by Mercier, was that your money or Aymar's money?
A. My money.
Q. For whose benefit was that purchase in Redmond's name?
A. My benefit.
Q. Do you know what has become of that mortgage note; was it purchased by Redmond?
A. It was given to Mr. Miller for collateral.
Q. To secure what debt was that given?
A. It was given to take up a note that Mr. Miller held against myself.
491 Q. At whose request was this pledged?
A. At my request.
Q. For whose benefit, sir?
A. It was for my benefit.
Q. Whilst that mortgage note was in Mr. Redmond's hands, whose order was it subject to?
A. Mine, sir.
Q. Mr. Aymar had no control over it?
A. No, sir; he had no control over it.

CHARLES E. ALTER sworn.

Direct examination by Mr. BRIGHT:

Q. Mr. Alter, did you ever have any conversation with Aymar relative to a judgment that Ames had against Allain and Aymar?
(Mr. Barrow objects to all conversations out of the presence of his client as binding him in no way.)
492 A. Yes, sir; I have frequently had conversations with Mr. Aymar on that subject—many of them.
Q. Recite them.
A. Well, so many I can hardly know where to begin, extending over a long space of time previous to the purchase of that judgment and note by Mr. E. J. Gay.
Q. Well, state what Aymar wanted you to do?
A. Well, Mr. Aymar a number of different times intimated that if he could buy my concurrent note for the same amount at a reduced price he would like to do so.
Q. Well, go on.
A. Well, I was not disposed to sell at a very low figure, and in the course of time I finally suggested to him that I would like—that I would be willing to buy the note held by Ames, and it finally led down on my part that I would buy at a figure named by myself, and he took
493 it, and after many talks on the subject he took it under consideration. He intimated to me that he thought I could obtain it; that he would attend to it and see.
Q. That is about all?
A. No; but I do not know what further thread in the matter is required of me to state. Time passed on and I thought I was to have it.

Q. Did Mr. Aymar get anybody to try and make that purchase for you?

A. Yes, sir; he informed me that it was in the hands of Judge Merrick, and Judge Merrick had the sale of it, and he finally introduced me or put me on the track of Mr. Butler, and Mr. Butler undertook to negotiate with Judge Merrick then instead, upon having further orders from Mr. Ames, who was in Massachusetts. He finally informed me that there was going to be some little contestation in obtaining it, and
494 I finally authorised Mr. Butler to buy for me and agreed to pay him his fees, as he complained that Mr. Aymar did not pay him a fee in the matter. Mr. Aymar finally intimated to me that he thought that Mr. E. J. Gay had made an offer for it, and it turned out that Mr. Gay was negotiating for it. I was to have it for forty-five hundred dollars paid for the note to be transferred to me, and a fee to be paid to Mr. Butler. In the mean time Mr. Ames, the holder of it, came here, and I understood he negotiated with Mr. E. J. Gay about it at an advance.

By Mr. BARROW:

Q. You say you were to have it for the forty-five hundred dollars ($4,500). Who made this proposition to you?

A. I made that proposition to Mr. Aymar.

Q. You did not know that anybody else—you did not know that
495 Judge Merrick or Ames ever agreed to that from your own knowledge?

A. Not from coming into contact with them myself.

Q. You were the holder of the mortgage note of eleven thousand dollars on the Australia plantation, were you not?

A. Yes, sir.

Q. At what time did you acquire that note?

A. Cannot recollect the exact date.

Q. From whom did you acquire it?

A. I acquired it from Aymar through his broker, L. F. Generes.

Q. Aymar held the note at the time you acquired it, then?

A. Yes, sir.

By Mr. BRIGHT:

Q. Explain what you mean by this last answer?

A. No, sir; I made a mistake there. The holder of the note was Merrill—Amos Merrill, I think his name was. Mr. Aymar was with him
496 and made the subrogation, joined in the subrogation with him, and they were both together. I mixed the matter up in my mind. Mr. Amos Merrill was the holder of that note. It was a note drawn up by Mrs. Margaret D. Allain, and the payment of it assumed by W. H. Aymar for eleven thousand dollars.

Q. Did you acquire by notarial act?

A. The subrogation was made by a notarial act.

Q. You acquired it from Merrill?

A. Yes, sir; I acquired it from Merrill.

Q. Is it to your knowledge that Aymar held that note?

A. Not as I know.

By Mr. BARROW:

Q. At whose request did you acquire that note? Was it not Aymar's?

A. No, sir. It was sold by Mr. Merrill, that note, through L. F. Generes, the broker.

497 Q. Was it not a sale after the maturity of the note; was not the note due at the time you acquired it?

A. I cannot say the date exactly.

Q. And was not your acquisition or payment for the whole?

A. Not a bit of it, sir. It was a plain matter of purchase by discount of the paper.

Q. And you purchased by discount paper that had matured, did you?

A. No, sir. I did not say it had matured.

Q. But such appears to be the fact from the subrogation?

A. Well, sir, the subrogation will show for itself.

Q. Did Mr. Merrill take less than the face of his note and the interest that was due on it?

A. It was at a discount. I think it was ten per cent. (10%) discount off of the face of the note.

Q. How did you pay for it?

A. In cash, in a check.

Q. Have you that check?

A. Not with me.

Q. On what bank was that check?

498 A. I think it was on the Teutonia Bank.

Q. Will you produce that check?

A. I don't know that I can. If I can produce it, I will.

Q. At the time you acquired that note, did you not hold other notes of Aymar's bearing on a plantation in the parish of St. James?

A. No, sir; none.

Q. When did acquire this note of Aymar that bore upon that plantation?

A. Never had any notes bearing on a plantation in the parish of St. James from Aymar.

Q. You had, though, at that time other notes of Aymar's?

A. I don't know whether I had at that time other notes of Aymar's. I have had other notes, but I cannot say whether it was before or after.

Q. You had had transactions with Aymar prior to that time?

A. I am not entirely certain. I won't say positively about it.

499 I had transactions with him before that, or I had some transactions after with him, but not many, either before or after.

Q. Where was this note deposited, or from whom did you receive this note at the time you were subrogated?

A. L. F. Generes, the broker. He was acting for Mr. Medill as his broker.

Q. Did Mr. Generes give to you that note—make the sale to you?

A. Yes, sir.

Q. It appears from the subrogation that this note was due on the 3rd day of January, 1871?

A. Yes, sir.

Q. And that you acquired it by subrogation on the 14th of July, 1871?

A. Yes, sir.

Q. After its maturity and after it had been protested?

A. No, sir; not after it had been protested. It did not state that; it never had any protest attached to it.

Q. Is it usual for brokers to sell past due notes, mortgage, or otherwise?

500 A. That is my experience, sir; and during those years it was

very often done. I have taken a great deal of mortgage paper after maturity.

DISTRICT OF LOUISIANA, *ss:*

Leslie Bobb, phonographer, being duly sworn, deposes and says that the foregoing is a correct report of the testimony of Frank N. Butler, Frederick Eastman, and Charles E. Alter.

LESLIE BOBB,
Stenographer.

Subscribed and sworn before me April 10th, 1878.
(Signed) F. A. WOOLFLEY,
Special Examiner.

DISTRICT OF LOUISIANA, *ss:*

I, T. A. Woolfley, special examiner, duly appointed by the circuit court of the United States fer the district of Louisiana, to take the testimony of Frank N. Butler, Frederick Eastman, and Charles E. Alter, witnesses on the part of Charles E. Alter, intervenor, do hereby
501 certify that on the *the* days mentioned in the depositions hereto annexed I was attended at the office of the clerk of said circuit court by the counsel and witnesses aforesaid; that the witnesses were duly sworn and examined and their depositions reduced to writing and their signatures to the same were waived by consent of counsel; and that Exhibits A and Butler 1 to 14 were offered in evidence on behalf of Charles E. Alter, intervenor in said cause, during the taking said depositions.

New Orleans, February 27th, 1878.
(Signed) F. A. WOOLFLEY,
Special Examiner.

502 *Testimony of Charles E. Alter.—Filed June 6th, '78.*

U. S. circuit court.—In equity.

F. M. AMES, ED. J. GAY, SUBROGATED, *vs.* ALLAIN & AL.

CH'S E. ALTER, recalled, says:

I have the checks given by me to Amos B. Merrill for the purchase by me of the mortgage note of Mrs. M. D. Allain. I produce them, annex them hereto, and they are marked X and Y: one check for $11,000, and one for $682.80. These are the amounts I paid Merrill for the note. I received a discount on the $11,000 for 188 days, at ¼% per month. Memoranda R, S are connected with the transaction; memorandum R is the statement made by the notary public, showing the amount for which I was to furnish check or money to Amos B. Merrill; memorandum S is the statement of the transaction furnished by L. F. Generes, the broker who registered the same with me. I was refunded $682.80 for one year's interest, at 6%, that had accrued on the note and 8 day's interest, $19.50, at 8%, & $3.30 costs of protest, and the discount
503 $861.67, all of which appear by memoranda S and R.

X-ex. by D. N. BARROW, att'y for Gay.

L. F. Generes was acting for the seller & holder, viz., Amos B. Merrill. My recollection is that the $1,544.47, the discount and interest on

the note, was settled by Mr. Generes, who gave me his check—the broker of Merrill, so far as I know. I looked upon Generes as the broker of Merrill, because I negotiated with him for the paper, and further it was stipulated by him that Aymar should join in the act of subrogation. I made two checks, because I had not enough money in one bank.

Memoranda S is in the handwriting of one of Generes' checks.

(Signed) CHA'S E. ALTER.

Sworn to and subscribed before the undersigned, a commissioner of the circuit courts, duly appointed and sworn by the circuit court of the United States in and for the district of Louisiana, at New Orleans, this 14th February, 1878.

[SEAL.] (Signed) ANDREW HERO, JR.,
Commissioner of Circuit Court.

504 *Document marked X annexed to foregoing testimony.*

[U. S. internal revenue, 2.]

No. 24.] NEW ORLEANS, *July* 14, 1871.

State National Bank of New Orleans, pay to the order of Amos B. Merrill, esq., six hundred and eighty-two $\frac{80}{100}$ dollars.

$682.80.

(Signed) CHAS. E. ALTER.

Documents marked Y annexed to foregoing testimony.

NEW ORLEANS, *July 14th*, 1871.

Teutonia National Bank of New Orleans, No. 28 Camp St., pay to the order of Amos B. Merrill, esq., eleven thousand dollars.

$11,000.

(Signed) CHAS. E. ALTER.

Memorandum marked R annexed to foregoing testimony

$11,000	00	
660	00	1 y'r's int. @ 6%.
19	50	8 day's int. @ 8%.
679	50	
3	30	Protest.
$11,682	80	

505 July 14th, '71.—This memo. of int. & principal of Mrs. Allain note received to day from A. Hero, N. P., in this office as am't to be paid by me, which I did pay in there to A. B. Merrill.

Document marked S annexed to foregoing testimony.

M. D. Allair, W. H. Aymar.

Jan'y 14–17th, 1872	11,000
188 days @ 1¼ p. ea	861 67
	10,138 33

Your check to Merrill..... 11,862 80
10,138 33

1,544 47

July 14, 1871.
L. F. G.

506 *Sale of Mrs. Allain to W. H. Aymar, 9th May, '71—Offered in evidence on behalf of Mrs. Peniston and Allain—Filed June 6th, '78.*

STATE OF LOUISIANA:

Before me, Joseph Cuvillier, a notary public for the parish of Orleans and the city of New Orleans, therein residing, personally appeared Mrs. Marguerite Delia Kennedy, wife of Mr. Sosthene Allain, with whom she resides, in the parish of West Baton Rouge, in this State, the said Mrs. Allain herein acting by virtue of an authorization to her, given by her said husband, by act passed on the twenty-seventh of April last, (1871,) before Austin Hunt, a notary public in and for the parish of Iberville, a duly certified copy of which is hereto annexed.

And the said Mrs. Allain, authorized as aforesaid, declared that she does, by these presents, sell, with all legal warranty and with subrogation to her rights and actions in warranty, against all preceding vendors and other warrantors, unto Mr. William Henry Aymar, of this
507 city, here present and accepting. The undivided half of that certain tract of land or plantation, situate, and being partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon forming the point known as Point Manchac, said tract of land being cultivated as a sugar plantation, known as the Australia plantation, bounded on the upper line by lands of Valsin Fullier, (exclusive of the Brackin tract containing about ninety acres,) containing in all an area of fifteen hundred & ¾ acres, or seventeen hundred and seventy-four superficial arpents and fifty-three hundredths of an arpent, & being composed of different tracts of land acquired by Sosthene Allain, as per plan of said plantation as surveyed by Auguste Wrotnoski, in March, eighteen hundred and sixty, said plan being now in the hands of Felix Grima, a notary public in the parish of Orleans, together with the undivided half of all and singular the brick sugar house with
508 slated roof, machinery, dwelling house, out houses, negro quarters, barns, stables, and other improvements thereon, and all the cattle, mules, horses, stock wagons, tools, harness, and agricultural implements of whatsoever nature or kind on said plantation, which is the same acquired by the said Mrs. Allain by purchase from Amos B. Morrell, of Boston, Massachusetts, by act before E. G. Gottschalk, a notary public of this city, on the third of July, eighteen hundred and sixty-nine.

This sale is made for and in consideration of the price and sum of forty-two thousand dollars, payable fifteen thousand dollars cash, and twenty-seven thousand dollars in thirteen years, with eight per cent per annum interest from the first of March last (1871), payable annually. In compliance with the above terms and conditions, the said Aymar has paid fifteen thousand dollars cash to the said Mrs. Allain, who acknowledges the receipt thereof and grants acquittance therefor; and for the balance, twenty-seven thousand dollars, with the interest thereon,
509 payable annually, the said Aymar has furnished the several promissory notes hereinafter described, subscribed by him to his own

order, and by him indorsed, dated March first, eighteen hundred and seventy-one; one note for the said sum of twenty-seven thousand dollars, payable thirteen years after date, and thirteen other notes, each for two thousand one hundred and sixty dollars each (being for the yearly interest on said sum of twenty-seven thousand dollars), the said interest notes being made payable respect*fully* at one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, & thirteen years from their dates, all of which fourteen notes, bearing eight per cent. interest per annum, from maturity until paid, are made payable at the domicil of the Bank of America, in this city; and the said notes were handed over to the said Mrs. Allain, who acknowledges the receipt thereof after having been paraphed ne varietur by the notary undersigned for identity herewith.

And in case it shall become necessary to institute legal pro-
510 ceedings for the recovery of the amount of the said notes, or of any part thereof, the said Aymar binds himself to pay the fees of the attorney-at-law employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for.

Now, therefore, in order to secure the punctual payment of the said notes at maturity, together with the interest and attorney's fees, the said Mrs. Allain authorized as aforesaid reserves her privilege of vendor and the said Aymar declared that he does by these presents mortgage, affect, and specially hypothecate in favor of the said Mrs. Allain, and to enure to the use and benefit of any and all future holder or holders of the said notes, the said Mrs. Allain here accepting for herself or others, not only the undivided half of the Australia plantation, purchased by these presents, but also the other half of the same plantation, which

the said Aymar has purchased from the present vendor, by act
511 dated July seventh, eighteen hundred and sixty-nine, before Selim Magner, then a notary public of this city, which entire plantation the said Aymar binds himself not to alienate or encumber to the prejudice of this act. It is hereby agreed between the parties that Mrs. Allain shall have the right to occupy with her family during the space of three years, to be computed from the first of March last (1871), the main dwelling house of said plantation and its appurtenances, as well as a sufficient number of laborers' cabins as may become necessary to lodge her servants and those of her family, but in case the said Aymar should hereafter sell the whole of the above-described plantation before the expiration of the said three years, and after the execution of his purchaser's title deeds, should the latter require from Mrs. Allain the possession of said main dwelling house, its appurtenances, and the

laborers' cabins above mentioned, she, the said Mrs. Allain, shall
512 vacate the premises, but only after the expiration of three months to be computed from the day she shall have been notified in writing of the intention of Mr. Aymer's purchasers to have the possession of the property, the use of which, is hereby reserved to Mrs. Allain. During the space of three years above referred to, neither Mrs. Allain nor Mr. Aymar shall be bound to make any repairs to the dwelling house and laborers' cabins above referred to nor shall Mrs. Allain be required to give any security for the use by herself and family of the said dwelling house and laborers' cabins.

By the hereunto annexed certificate from the recorder of mortgages for the said parish of Iberville, under date of April eighteen, eighteen hundred and seventy-one, it appears that there is no other encumbrance standing in the name of the said Mrs. Allain and recorded against the plantation above described than a special mortgage in favor of Mr.

Amos B. Merrill to secure the payment of thirty-three thousand
513 dollars with interest, which mortgage the said Mr. Aymar has assumed by his act of purchase of the other undivided half, passed on the seventh of July, eighteen hundred and sixty-nine, before Selim Magner, then a notary public of this city.

Mr. Aymar binds himself to cause to be erased from the books of the recorder of mortgages, both for the parish of West Baton Rouge and Iberville, the above mortgage of thirty-three thousand dollars, as follows:

To the extent of eleven thousand dollars, by the first of July, eighteen hundred and seventy-three.

To the extent of eleven thousand dollars more, by the first day of July, eighteen hundred and seventy-four.

And to free entirely the said plantation from the effect of said mortgage by the first day of July, eighteen hundred and seventy-five.

It is agreed by and between the parties hereto that in case the said Aymar should fail by the first day of July, eighteen hun-
514 dred and seventy-five, to free the said plantation from the effects of the said mortgage of thirty-three thousand dollars, then the said Mrs. Allain shall have the right to enforce not only the payment of such of the interest notes above referred to as may be then due, but also the interest note falling due in the year eighteen hundred and seventy-six, and the note of twenty-seven thousand dollars which shall become due and demandable by the last of the failure on the part of the said Aymar to free the above plantation of the mortgage of thirty-three thousand dollars, as herein above contemplated.

It is also hereby agreed by and between the parties that Mrs. Allain shall have the right to require and to compel Mr. Aymar to pay, by anticipation and after thirty days' notice, any of the interest coupon notes above referred to, provided the said Aymar be not required to pay by anticipation more than one interest coupon note in the same year.

All the taxes which are or may be now, or may hereafter become due, on the said plantation, the said Aymar binds himself to pay.

515 According to the certificate of the recorder of mortgages for the parish of West Baton Rouge, also annexed to these presents, it appears that besides the mortgages for thirty-three thousand dollars above referred to, the undivided half of said plantation sold by these presents is subject to a judicial mortgage for sixty-seven dollars and fifty cents, with interest and costs, in favor of J. V. Duralde, which mortgage the said Mrs. Allain binds herself to have erased and cancelled in the shortest possible delay, which is accepted by the purchaser.

Thus done and passed in my office on this ninth day of May, eighteen hundred and seventy-one, in presence of Theodule Buisson and George Guinalte, complainant witnesses, residing in this city, who have signed these presents, together with the parties, and me, notary, after a due reading of the whole.

At the moment of signing the foregoing act, the parties agrees and covenant that should Mr. Aymar, before the expiration of the four
516 years contemplated for the entire erasure of the thirty-three thousand dollars, sell or convey the Australia plantation, or any portion thereof, he will then be bounded to *come* to be erased immediately the above mortgage of thirty-three thousand dollars, to the extent

of the amount of suits of the notes representing the said mortgage claim of thirty-three thousand dollars, as will then be due and exigible.

(Original signed) M. D. ALLAIN.
WILLIAM H. AYMAR.
GEO. GUINAULT.
P. BUISSON.

JOSEPH CUVILLIER,
Notary Public.

A true copy from the original.

JOSEPH CUVILLIER,
Notary Public.

A true record inscribed this 16th day of May, 1871.
(Attest) P. VERRET,
Recorder.

RECORDER'S OFFICE,
Parish of Iberville, La.:

A true copy from mortgage book No. 10, entry No. 377, duly recorded in the office this day, May 16th, 1871, from folio 633-637.
Witness my hand and seal of office this 16th May, A. D. 1871.
[SEAL.] P. VERRET,
Recorder.

[Inter. rev. 5c.]

517 *Notes made by Aymar.—Offered in evidence on behalf Mrs. Peniston and Allain.*

$2,160.] NEW ORLEANS, *March the 1st*, 1871.

Three years after date I promise to pay to the order of myself (at the domicil of the Bank of America, in this city) two thousand one hundred and sixty $\frac{00}{100}$ dollars, value received, at the rate of eight per cent. per annum from maturity until paid.
No. 3. Due.
(Signed) WILLIAM H. AYMAR.

(Endorsed:) William H. Aymar.

(Across the face:)
Ne Varietur. In conformity to an act of sale passed this day before me and duly stamped sixty-nine dollars.
New Orleans, May 9, 1871.
(Signed) JOSEPH CUVILLIER,
Not. Public.

$2,160 $\frac{00}{100}$.] NEW ORLEANS, *March the 1st*, 1871.

Four years after date I promise to pay to the order of myself (at the domicil of the Bank of America, in this city) two thousand one hundred and sixty $\frac{}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.
No. 4. Due.
(Signed) WILLIAM H. AYMAR.

(Endorsed:) William H. Aymar.

(Across the face :)
Ne Varietur. In conformity to an act of sale passed this day before me, and duly stamped sixty-nine dollars.
New Orleans, May the 9th, 1871.
(Signed) JOSEPH CUVILLIER,
Not. Public.

$2,160.00.] NEW ORLEANS, *March the 1st*, 1871.

Five years after date I promise to pay to the order of myself (at the domicil of the Bank of America, in this city) two thousand one
518 hundred and sixty $\frac{00}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

No. 5. Due.
(Signed) WILLIAM H. AYMAR.
(Endorsed :) William H. Aymar.
(Across the face :)
Ne varietur. In conformity to an act of sale passed before me, and duly stamped sixty-nine dollars.
New Orleans, May the 9th, 1871.
JOSEPH CUVILLIER,
Not. Pub.

$2,160.] NEW ORLEANS, *March 1st*, 1871.

Six years after date I promise to pay to the order of myself (at the domicil of the Bank of America, in this city) two thousand one hundred and sixty $\frac{00}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.
No. 6. Due.
(Signed) WILLIAM H. AYMAR.

(Across the face :)
Ne varietur: In conformity to an act of sale passed this day before me, and duly stamped $69 *dollars.*
New Orleans, May the 9th, 1871.
JOSEPH CUVILLIER,
Not. Pub.

$2,160$\frac{0}{100}$.] NEW ORLEANS, *March 1st*, 1871.

Seven years after date I promise to pay to the order of myself (at the domicil of the Bank of America, in this city) two thousand one hundred and sixty $\frac{0}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.
No. 7. Due.
(Signed) WILLIAM H. AYMAR.
(Endorsed :) William H. Aymar.
(Across the face :)
Ne varietur: In conformity to an act of sale passed before me and duly stamped sixty-nine dollars.
New Orleans, May the 9th, 1871.
JOSEPH CUVILLIER,
Not. Pub.

519 $2,160$\frac{0}{100}$.] NEW ORLEANS, *March the 1st*, 1871.
Eight years after date I promise to pay to the order of myself (at

the domicil of the Bank of America, in this city) two thousand one hundred and sixty $\frac{0}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

No. 8. Due.

(Signed) WILLIAM H. AYMAR.

(Endorsed:) William H. Aymar.

(Across the face:)

Ne varietur: In conformity to act of sale passed this day before me, duly stamped sixty-nine dollars.

New Orleans, May the 9th, 1871.

JOSEPH CUVILLIER,
Not. Pub.

$2,160$\frac{0}{100}$.] NEW ORLEANS, *March the* 1*st*, 1871.

Nine years after date I promise to pay to the order of myself (at the domicil of the Bank of America, in this city) two thousand one hundred and sixty $\frac{0}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

No. 9. Due.

(Signed) WILLIAM H. AYMAR.

(Endorsed:) William H. Aymar.

(Across the face:)

Ne varietur: In conformity to an act of sale passed this day before me, and duly stamped sixty-nine dollars.

New Orleans, May the 9th, 1871.

JOSEPH CUVILLIER,
Not. Pub.

$2,160$\frac{0}{100}$.] NEW ORLEANS, *March the* 1*st*, 1871.

Ten years after date I promise to pay to the order of myself (at the domicil of the Bank of America, in this city) two thousand one
520 hundred and sixty $\frac{0}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

No. 10. Due.

(Signed) WILLIAM H. AYMAR.

(Endorsed:) William H. Aymar.

(Across the face:)

Ne varietur: In conformity to an act of sale passed this day before me, and duly stamped sixty-nine dollars.

New Orleans, May the 9th, 1871.

JOSEPH CUVILLIER,
Not. Pub.

$2,160$\frac{0}{100}$.] NEW ORLEANS, *March the* 1*st*, 1871.

Eleven years after date I promise to pay to the order of myse'f (at the domicil of the Bank of America, in this city) two thousand one hundred and sixty $\frac{0}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

No. 11. Due.

(Signed) WILLIAM H. AYMAR.

(Endorsed:) William H. Aymar.

(Across the face:)

Ne varietur: In conformity to an act of sale passed this day before me, and duly stamped sixty-nine dollars.

New Orleans, May the 9th, 1871.

JOSEPH CUVILLIER,
Not. Pub.

$2,160\frac{0}{100}$.] NEW ORLEANS, *March the 1st*, 1871.

Twelve years after date I promise to pay to the order of myse'f (at the domicil of the Bank of America, in this city) two thousand one hundred and sixty $\frac{00}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

No. 12. Due.

(Signed) WILLIAM H. AYMAR.

(Endorsed:) William H. Aymar.

(Across the face:)

Ne varietur: In conformity to an act of sale passed this day before me, and duly stamped sixty-nine dollars.

521 $2,160\frac{0}{100}$.] NEW ORLEANS, *March the 1st*, 1871.

Thirteen years after date I promise to pay to the order of myself (at the domicil of the Bank of America, in this city) two thousand one hundred and sixty $\frac{0}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

No. 13. Due.

(Signed) WILLIAM H. AYMAR.

(Endorsed:) William H. Aymar.

(Across the face:)

Ne varietur: In conformity to an act passed this day before me, and duly stamped sixty-nine dollars.

New Orleans, May the 9th, 1871.

JOSEPH CUVILLIER.
Not. Pub.

$27,000\frac{00}{100}$.] NEW ORLEANS, *March 1st*, 1871.

Thirteen years after date I promise to pay to the order of myself (at the domicil of the Bank of America, in this city) twenty-seven thousand $\frac{00}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

No. Due.

(Signed) WILLIAM H. AYMAR.

(Endorsed:) William H. Aymar.

(Across the face:)

Ne varietur: In conformity to an act of sale passed this day before me, and duly stamped sixty-nine dollars.

New Orleans, May the 9th, 1871.

Certificate of the recorder of mortgages, parish of West Baton Rouge, offered in evidence on behalf of Mrs. Peniston and Allain.

522 STATE OF LOUISIANA,
Parish of West Baton Rouge:

I do hereby certify that, agre'ably to the records of my office, it appears that the "Australia plantation," belonging to William H. Aymar, situated in the parish of West Raton Rouge, containing $1,501\frac{34}{100}$ acres, or $1,774\frac{53}{100}$ arpents, is affected with the following mortgages, to wit:

1st. A privilege against Sosthene Allain on said Sosthene plantation, in favor of Michael Credon, contractor of levees, for levees made on said plantation, and extra work in fa'cinating levee on same, & etc., for the sum of $1,047.65. Recorded May 13th, 1869, in record of mortgages, No. 1, folio 43, No. 22.

2d. A special mortgage in the name of Mrs. Margaret D. Allain, wife

of Sosthene Allain, in favor of Amos B. Merrill, on said plantation, to secure a sum of thirty-three thousand dollars, purchase price thereof, represented by her three promissory notes of $11,000.00 each, dated July 3d, 1869, payable one, two, and three years, with 6% interest per annum from date till maturity, and thereafter, if not then paid, at the rate of 8% per annum until final payment, with 5% att'ys' fees—$33,000.00. Recorded July 20th, 1869, in record of mortgages No. 1, folio 79, entry No. 43.

523

3d. A special mortgage in the name of Wm. H. Aymar, in favor of Mrs. Margaret D. Allain or Amos B. Merrill, for the sum of $33,000.00, being for purchase-price of the one undivided half of said Australia plantation, and being the assumption, by said Aymar, of the payment of three notes of $11,0 0 each, above described and mentioned, and subscribed by Mrs. Allain, favor of said Merrill, $33,000.

4th. A special mortgage in the name of W. H. Aymar, in favor of Mrs. Margaret D. Allain, on the one undivided half of said Australia plantation, to secure a sum of $27,000, being part of the purchase-price thereof, represented by the following notes, to wit, one of his notes for the sum of $27,000, dated first March, 1871, payable thirteen years after date, and thirteen others, each for the sum of $2,160, being for yearly interest of said sum of $27,000, said interest notes payable respectively at 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 & 13 years from date, and all bearing 8% interest per annum from maturity till paid, with 5% att'ys' fees in case of suit—$27,000.00. Recorded May 19th, 1871, in record of mortgages, No. 1, folio 557, No. 416.

524

5th. A special mortgage in the name of said W. H. Aymar, in favor of Benjamin F. Milliken, on said Australia plantation, to secure a loan of $15,000, represented by his 4 several promissory notes, dated Jan'y 4th, 1872, bearing 8% interest per annum from maturity till paid, two for the sum of $5,540 each, one for $2,320, and one for $1,600, all payable 5th Febr'y, 1873, with 5 % att'ys' in case of suit—$15,000. Recorded March 1st, 1872, in record of mortgages No. 1, folio 688, entry No. 505.

6th. A lien and privilege against said Aymar, favor of Marioneaux, Wilbert & Co., for lumber furnished for sugar-house and outhouses, for the sum of $247.83. Recorded March 11th, 1872. Record of mortgages No 1, folio 698, entry No. 512.

7. A lien and privilege against said Aymar, favor of George Morris, as hostler, for 95.60. Recorded Oct. 23d, 1872.

525

8th. A lien & privilege against said Aymar, favor of O. N. Poirrier, in the sum of $64, for repairs made and work on the engine & mill in sugar-house, and for $98.07 for 17 days' work as engineer for taking off crop 1872. Recorded Jan'y 28, '73. Record mortgages No. 2, folio 180, No. 148.

9. A judicial mortgage against said Wm. H. Aymar and Mrs. Margaret D. Allain, in favor of Frank M. Ames, for the sum of $11,000, am't of mortgage-note, with 1 year's interest thereon at 6 %, and the residue of the interest of said note at 8 % per annum from 3rd July, 1871, till paid, and 5 % att'ys' fees on said sum and interest, with mortgage on said Australia plantation. Said judg't ordering the seizure and sale of said plantation to pay above debt, interest 5 %, att'ys' fees, costs of copies and costs of suit, and that execution issue accordingly, $11,000.00. Recorded June 10th, 1873, in record of mortgages No. 2, folio 288, entry No. 280.

526

10. A mortgage, by way of antechrises, in the name of said W. H. Aymar, in favor of Frederick Eastman, on said plantation, to secure

advances to the am't $17,000.00, payable between 18th Nov., 1873, & 15 Feb'y, 1874, at such times as may be required by said Aymar, with 8 % interest thereon, and all costs, charges, and premiums, including 5 % att'ys' fees on am't sued for—$17,000.00. Recorded Nov. 24th, 1873, in record mortgages No. , folio 339, entry No. 328.

11th. A lien and privilege against said Aymar, favor of Jack Martin, on movables on said Australia, for work done to an am't of $174.59. Recorded Feb'y 18th, 1874, record mortgages No. 2, folio 418, ent'y 388.

12. A judicial mortgage against said Aymar, in favor of O. M. Porrier, for $[illegible].07, with legal interest from jud'l demand, and costs, and for the further sum of $64 for done and repairs on sugar-mill, engine & sugar house, with legal int. from jud'l demand, and costs, with privilege on sugar house, one acre of land, etc., $162.07. Recorded May 13th, 1874, record of mortgages No. 2, folio 512, entry No. 506.

527 13. A lien and privilege against said Aymar, favor of Edmond Fullier, for $105.88, as hostler, on all moveables found on the place. Recorded Dec. 18th, '74, in record of mortgages No. 2, folio 538, entry No. 543.

14. Reinscription of mortgage & lien by Aymar to Wilbert, Marioneaux & Co. for $247.83. Reinscribed Jan'y 18th, '75, record of mortgages, folio 595, entry No. 562.

15. A judicial mortgage against said Aymar, favor of Jack Martin, for the sum of $60, with 5 % interest from 1st January, 1874, till paid, & costs, $60. Recorded March 16th, 1875, record of mortgages No 2, folio 623, entry No. 584.

16. And a special mortgage against said Aymar on and affecting said Australia plantation, favor of the State of Louisiana, for $559.77, amount of State taxes due on same for the year 1874 & in favor of parish of West Baton Rouge for the sum of $459.75, being am't parish taxes due thereon. Recorded 16th Dec., 1875.

As witness my hand and seal of office this 28th day of Feb'y, A. D. 1876.

[SEAL.] (Signed) O. BOMAN,
Recorder.

528 *Certificate of the recorder of mortgages, parish of Iberville, 26th March, 1876. Offered in evidance on behalf of Mrs. Peniston & Allain.*

STATE OF LOUISIANA,
Parish of Iberville:

RECORDER'S OFFICE.

I, the undersigned, recorder of mortgages in and for the parish of Iberville, State aforesaid, do hereby certify that on the record of mortgages under my charge there exist, recorded in the name of and against Wm. H. Aymar and Mrs. Margaret D. Allain, the hereinafter mentioned mortgages, affecting the following-described property, to wit:

A certain tract of land or plantation situate and lying partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon, and forming the point known as Point Manchac, opposite bayou Manchac; said tract of land being cultivated as a sugar plantation, known as the Australia plantation, bounded on the upper line by lands of Valsin Fullier (exclusive of the Brackin tract, containing about

529 ninety acres), containing in all an area of fifteen hundred and

one $\frac{34}{100}$ acres (1,501 $\frac{34}{100}$) or seventeen hundred and seventy-four superficial arpents and $\frac{53}{100}$ of an arpent, and being composed of different tracts of land acquired by S. Allain, as per plan of said plantation, as surveyed by A. Wrotnowski in March, 1860, said plan being now in the hands of Felix Grima, a notary public in New Orleans, together with all and singular the buildings and improvements thereon, consisting of a brick sugar house and mill with slated roof, machinery, dwelling house and out-houses, quarters, barns, stables, and other improvements and appurtenances thereunto belonging, or in anywise appertaining, and also all rights, ways, and immunities thereto belonging, & et.

1°. A special mortgage in favor of Amos B. Merrill, for the sum of thirty-three thousand dollars, represented by three promissory notes of $11,000.00 each, dated July 3d, 1869, payable at the Citizens' Bank of Louisiana, in New Orleans, at one, two, and three years after date,
530 with interest thereon at the rate of six per cent. per annum from date, and if not paid at maturity, to bear interest at eight per cent. per annum, the current interest at six per cent. being payable annually, and in case of suit for the recovery of said amount, or any part thereof, five per cent. on the amount sued for, as per book of mortgages No. 9, entry No. 310, inscribed July 26th, A. D. 1869.

2d. Another special mortgage assumed by Wm. H. Aymar for the sum of $33,000; these promissory notes being the same as above, said notes were assumed by said Aymar, on the seventh day of July, 1869, and the act of mortgage, as duly recorded in my office, in Book of Mortgage No. 10, entry No. 211, August 9th, 1869.

3d. Another mortgage for the sum of twenty-seven thousand dollars, represented by fourteen several promissory notes, dated March 1st, 1871, drawn by said W. H. Aymar, one of said notes for the sum of seven thousand dollars, payable thirteen years after dates, and thirteen other notes, each for two thousand one hundred and sixty dollars each, being for the yearly interest on said sum of twenty seven thou-
531 sand dollars, the said notes being made payable respectively at one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, and thirteen years from their date, all of which fourteen notes bearing interest at eight per cent. per annum from maturity until paid, and made payable at the Bank of America, in New Orleans, as per Book of Mortgages No. 10, entry 377, inscribed May 16th, 1871.

4°. Another special mortgage in favor of Benjamin F. Milliken, for the sum of fifteen thousand dollars; four promissory notes, drawn to the order of, and endorsed by, W. H. Aymar, dated January 4th, 1872, two for the sum of five thousand five hundred and forty dollars each, one for the sum of two thousand three hundred and twenty dollars, and one for sixteen hundred dollars, all made payable on the fifth day of February, 1873, bearing eight per cent. per annum from maturity, until paid, together with 5 %, five per cent. attorney's fees in case of suit, as per record of Mortgage Book No. 11, entry No. 295, inscribed March 2d, 1872.

5°. A judicial mortgage against Margaret D. Allain and Wm.
532 H. Aymar, and in favor of Frank M. Ames, for the sum of eleven thousand dollars, with one year's interest thereon, at six per cent., and the residue of the interest on said promissory note, at eight per cent. per annum, from the 3d day of July, A. D. 1871, until paid, and for attorney's fees at five per cent. on the said sum and interest and costs upon the said Australia plantation, as per record of Book of Mortgages No. 12, entry No. 502, inscribed June 10th, 1873.

6°. A special mortgage in favor of Frederick Eastman for the sum of seventeen thousand dollars, for which sum the said Aymar has delivered by way of antichresis the said Australia plantation, together with all stock, &c., said sum to bear interest at the rate of eight per cent. per annum, payable between the eighteenth day of November, 1873, and the fifteenth day of February, 1874, as per record of book of mortgages No. 13, entry No. 23, inscribed November 22d, 1873.

In witness whereof I have hereunto set my hand and affixed the official seal of this office this 25th day of March, A. D. 1876.

[SEAL.] (Signed) L. E. DUHART,
Recorder.

533 *Document E.—Contract between F. Eastman & Rob't M. Walsh, June 14th, 1877.—Offered in evidence on behalf of E. J. Gay.—Filed June 6th, '78.*

Whereas Frederick Eastman, of the city of New Orleans, claims to have acquired the ownership of a ⅔ interest in the note and mortgage paid upon in the matter entitled Frank M. Ames, E. J. Gay, subrogated, vs. Mrs. Margaret D. Allain et als., No. 6894, U. S. circuit court, district of Louisiana, and to that extent to be the owner of the proceeds of the property sold in said suit to satisfy said mortgage:

Now, therefore, the said Eastman, for and in consideration of the price and sum of one thousand dollars, to him in hand paid, hereby transfers, assigns, and conveys unto Robert M. Walsh, of the city of New Orleans, all his right, title, and interest in and to said note & mortgage, and in and to the proceeds, or any part or portion of the proceeds, of the property sold in the above entitled suit, but without guaranty
534 or warranty in the premises.

Furthermore it is stipulated and agreed, for and in consideration of the sum p'd as aforesaid, that the said Eastman abandons and transfers unto the said Walsh whatever title or claim he may now have or hold, but without any warranty whatsoever in and to the note and mortgage pledged to secure the note of H. P. Redmond for $1,576.00 & interest, now held by the Grand Lake Coal Company, of Pittsburg, Pennsylvania, it being the understanding and belief of the parties hereto that neither said pledged note nor the mortgage given to secure the same have any legal or binding force or effect whatsoever upon the property or the proceeds of the property sold as aforesaid in the said suit of Frank M. Ames, E. J. Gay, subrogated, vs. Margaret D. Allain et als., No. 6894.

New Orleans, June 14th, 1877.

(Signed) F. EASTMAN.
(do.) R. M. WALSH.

Attest:
WM. DARRAH.
WM. B. BLOOMFIELD.

See cash book No. 6, folio ⅋ 319.
" letter book No. 18, " ⅋ 793.

535 *Document F.—Filed June 6th, 1878.—Offered in evidence on behalf E. J. Gay.*
U. S. court.

F. M. AMES, E. J. GAY, SUBROGATED, *vs.* M. D. ALLAIN. } No. 6894.

EDWARD J. GAY, sworn, says:

Coming down the river some time in Feb. or March, 1876, I met Mr.

Ames on the boat; he mentioned his having been up to examine the Australia plantation. I asked him about the nature of his claim still upon the property. He entered into an explination of his position, stating he still held one of the original notes of $11,000, of Mrs. Allain, which had been assumed by W. H. Aymar. I asked him particularly about this $3,000.00 which he was said to have received. Mr. Ames told witness that he had been in negotiation with parties long prior to that, and had agreed to sell the note for a certain price, which I under-
536 stood to be $9,000.00, and that he had been paid $3,000 on account, but that the parties had entirely failed to carry out their agreement, and that he considered they had forfeited what they had paid, and that he consillered the note his property. I had some conversation with him as to what he would take for it, and at the time nothing definite was stated. I asked him if, rather than worry with it, he would take fifty cents on the face of the note, exclusive of interest. He said he thought he would. We parted without making any arrangement.

X-examined by Mr. BRIGHT:

I received several letters written by Mr. Ames to me, and have same, and such as you may desire I will produce. Mr. Ames was very particular in his proposition to specify the nature of this $3,000 transaction, but he always plainly stated that it was a payment on account of an agreement on his part to sell.

537 Quest. Did you not subsequently purchase of F. Eastman any claim he might have for this $3,000, and did you not so purchase in the name of Mr. Wash?

Answer. Yes; I was always solicitous, from statements made to me and threats of the parties claiming to have originally bought this note of Ames, that they would intervene in the suit and claim to be the actual owners of the note, from the fact of Mr. Ames never having put them in default, and when Mr. Butler, representing as attorney parties claiming to be the purchasers, offered to sell me their claim, I took the matter under advisement and sought to get all the information I could on the subject, among others, from Mr. W. H. Aymar. Aymar stated to me positively that he had no interest in the transaction whatever. I felt that the original purchasers of Mr. Ames had some equitable right, and the next consideration was to *re*quire it upon the most favorable terms that I could. I first contracted with Mr. Butler, not only
538 for the interest in the purchase of the note which he claimed was the property of Mr. Eastman, but also for the residuary interest of Mr. Eastman in another note of the same series, which he stated to me belonged to Mr. Eastman, but was pledged at the time to Mr. Miller, the coal merchant, for a debt due Miller by Aymar. Amount of the debt said to be due Miller was about $1,600.00, which Mr. Butler told witness he thought could be compromised for about $500.00, and that after the note was released from that pledge Mrs. Eastman would be willing to turn over to me and cancell this 3d note.

That arrangement was subsequently cancelled, and my transaction with Mr Butler, representing Eastman, was by a subsequent arrangement resricted to the purchase of his interest in the $11,000 which witness had bought of Ames. The object of this was the reduction in the price which witness was to pay, and from the consideration that I had
539 made up my mind from advising with Mr. Butler and others that the $11,000 note no legal validity whatever.

When the second arrangement was agreed upon with Mr. But-

ler, I was advised that as I was a party proceeding to enforce the collection of the Ames note, that it would be more proper that the intervention that might be made to set up the rights of Eastman for the $3,000 which he had paid Ames on account of the purchase should be made in a different name; I therefore advised with Mr. Walsh and asked him if he would become the purchaser of the interest of Eastman. He agreeing, the transfer was made to him.

The transfer is in writing and witness will annex same. The money to pay for same was handed to Mr. Walsh and was charged to his account on the books of the firm of Edward J. Gay & Co.

While Mr. Walsh consented to this arrangement entirely at my request, the transfer to him actually made him the owner of this claim, subject entirely to his own control, subject to the claims of his creditors,
540 as any transaction could make any property his own. The risk of placing it in his name and of *of* his good faith was witness.

The amount at this time paid was $500.00. The whole transaction embraced in the first and second agreement cost me $1,000. The money in the first instance was paid upon Mr. Eastman's receipt into the hands of his attorney, Mr. Butler. The second payment was made to Mr. Eastman in person.

I never saw Mr. Eastman in person previous to his coming in to close the last agreement. Before that I had conversations with Aymar, seeking information about the actual condition of the claim. Aymar did not come to my office; I met him casually and had a conversation with him about the matter.

I have no personal knowledge that Aymar was in the habit of using Eastman to cover his transactions. I never had any such transaction with him. I was very anxious to find out if Aymar was or not at
541 the bottom of the matter, and this *had* to his declaration that he had no interest in the matter whatever.

(Signed) EDWARD J. GAY.

Sworn to and subscribed to before me this 1st March, 1878.

[SEAL.] (Signed) JOHN W. McCORMICK,
Second Justice Peace.

Document G.—Sale of property.—Mrs. M. D. Allain to Wm. H. Aymar.—Offered in evidence by executors of Miller.—Filed June 6th, '78.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this day, before me, Selim Magner, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared Mistress Marguerite D. Allain, wife of Sosthene Allain, of the
542 parish of West Baton Rouge, in this State, herein acting in the absence of her said husband, I, under the assstance and authorization of Sosthene Allain, jr., the attorney in fact of said Sosthene Allain, duly appointed by act of procuration executed before Henry Desobry, a notary public in the parish of Iberville, on the twenty-third of June, 1869, and moreover by a supplemental power attached thereto, dated the fifth of July, 1869, who declred that for the consideration and on the terms and conditions hereinafter set forth, she does by these presents grant, bargain, and sell with all legal warranties, and with subrogation to all her rights and actions in warranty against all preceding vendors possessors, unto Willam Henry

Aymar, of this city, here present, acknowledging possession and accepting for himself, his heirs and assigns, the undivided half of the hereinafter described tract of land, together with the one undivided half of the buildings and improvements thereon and appurtenances thereof,
543 and all the rights, ways, servitudes, privileges, and advantages thereunto belonging, to wit:

A certain tract of land or plantation situate, lying, and being partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, on the right bank of the river Mississippi, fronting thereon and forming the point known as Point Manchac, opposite Bayou Manchac, said tract of land being cultivated as a sugar plantation known as the "Australia plantation," bounded on the upper line by lands of Valsin Tullier (exclusive of Brackin tract, containing about ninety acres), containing in all an area of fifteen hundred and one $\frac{34}{100}$ acres ($1,501\frac{34}{100}$) or seventeen hundred and seventy-four superficial arpents and $\frac{53}{100}$ of an arpent, being composed of different tracts of land acquired by Sosthene Allain, as per plan of said plantation as surveyed by Auguste Wrotnowski in March, 1860, said plan being now in the hands of Felix Grima, a notary public in this city, together with the undivided half of
544 all and singular the *the* brick sugar mill with slated roof, machinery, dwelling-house, out-houses, negro quarters, barns, stables, and other improvements thereon, and of all the cattle, mules, horses, stock, wagons, tools, harness, and agricultural implements, &c., of whatsoever nature or kind now on said plantation, which plantation and appurtenances were acquired by said Mistress Marguerite D. Allain by purchase from Amos B. Merrill, of Boston, Massachusetts, per act passed before Edward G. Gottschalk, a notary public in this city, on the third day of July, 1869; the title to which plantations are detailed and described in the act of purchase of him, said Merrill.

To have and to hold the said presently sold one undivided half of said plantation and appurtenances unto the said purchaser, his heirs, and assigns forever.

The said purchaser does hereby dispense with the production of the certificates of mortgages from the West Baton and Iberville, as
545 required by law, and exonerates the undersigned notary from all responsibility in the premises.

But the said Mistress Allain nevertheless declared that said property stands encumbered in her name by the mortgage she granted in and by her afore recited act of purchase, to secure the payment of three several promissory notes, drawn by her to the order of and endorsed by herself, dated the third of July, 1869, each for eleven thousand dollars, payable, respectively, at one, two, and three years after date, at the Citizens' Bank of Louisiana, in this city, with interest thereon at six per cent. per annum from date until maturity, and eight per cent. thereafter until payment, six per cent. interest being payable annually.

This sale is made for and in consideration of the price and sum of thirty-six thousand three hundred and twenty dollars, and interest, as hereinafter set forth, which has been paid and is payable
546 in manner following, to wit: Thirty-three hundred and twenty dollars in ready money, paid by said purchaser to the said vendor, the receipt whereof is hereby acknowledged and acquittance and discharge therefor granted; and the balance of thirty-three thousand dollars and interest in the obligation which the said purchaser takes to put himself in the place and stead of his said vendor, and assume, as he does hereby assume, as well to pay to her acquittance the above described three promissory notes, in capital, and all interest accrued

and to accrue thereon, as to assume the reversion of the mortgage which the payment of the same stands secured.

The U. S. internal revenue stamps of thirty-six dollars and fifty cents in this act are hereto attached.

And thereupon the said Mistress Margurite Allain, authorized as aforesaid, furthermore declared that it was her intention not
547 only to ratify said sale, but to make remuneration of all rights she has, by mortgage or otherwise, on the said property, upon which I, notary, declared to her separately and apart from her said husband, and out of his presence, as it is my duty, that by the laws of this State she possessed a general mortgage upon all the property of her said husband, and upon that of the community she should renounce thereto.

First. For the restitution of her dower, and the reinvestment of dotal property brought by her in marriage.

Second. For the restitution of dotal property by her acquired during marriage, by inheritance, donation, or otherwise.

Third. For indemnity against all debts contracted, or which she may hereafter contract with her said husband.

Fourth. For such of her paraphernal property and funds as may have been alienated by her said husband, or which he has had, or may
548 have, the administration or enjoyment, or of which he may otherwise have benefited.

Fifth. For nuptial presents made to her by her said husband or others. That in making her intended remuneration she would deprive herself irrevocably and forever of all rights of reclamation against said property whether under mortgage, privilege or otherwise.

Whereupon the said wife declared that she still persisted in the intention she had announced to ratify said act of sale and to dispossess herself of all rights and liens which she has upon said property whether by marriage, contract, dower, donation, or otherwise.

And the said husband being now again present before me, and authorizing his said wife, she again declared that she does hereby formerly renounce henceforth and forever all and singular her said rights, and transfers the same to the said purchaser and assigns, to be had and held by him and them, and by them enjoyed in law thereout; and she hereby binds herself and her heirs, to the said purchaser, his heirs and
549 assigns, that she and they shall, and will at all times, acknowledge the validity of present sale, and of the renunciation she now makes, of all rights which she has or may have in and to the property herein and hereby sold; and that neither she nor they shall ever seek to oppose or impair the force of this act, hereby renouncing the benefit of all laws, privileges, and customs of which she might avail herself, or which are in her favor in the premises.

Done and passed at New Orleans, the seventh day of July, eighteen hundred and sixty-nine, in the presence of James Fahey and Martin L. Ainsworth, witnesses residing in this city, who have signed their names with the said appearers, and me, notary, after reading thereof.

(Original signed) M. D. ALLAIN.
L. ALLAIN, JR.,
Appr. of Att'y.
WILLIAM H. AYMAR.
S. MAGNER, *Not. Pub.*

JAS. FAHEY.
M. L. AINSWORTH.

I, John Bendernagle, custodian of notarial records, parish of Orleans, do certify the foregoing to be a true and correct copy of the original act in the records of S. Magner, late notary, now in my custody.

In faith whereof I hereunto set my hand and seal this 25 November, 1875.

(Signed) J. BENDERNAGLE,
Custodian of Notarial Records.

Document H.—Sale of property.—Amos B. Merrill to Mrs. M. D. Allain. Offered in evidence on behalf executors of Miller.—Filed June 6, '78.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this third day of July, eighteen hundred and sixty-nine, before me, Edward G. Gottschalk, a notary public in and for this city and the parish of Orleans, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Amos B. Merrill, esquire, of Boston, Massachusetts, who declared that for the consideration hereinafter set forth, he does by these presents grant, bargain, sell, convey, transfer, assign, and set over with no personal warranty on his part, unto Mistress Margaret D. Allain, wife of Sosthene Allain, residing in the parish of West Baton Rouge, in this State, here present, acknowledging possession and accepting for herself, her heirs and assigns, under the authorization of Sosthene Allain, jr., the attorney in fact of said Sosthene Allain, duly appointed per act of procuration executed in his favor by act before Henry Desobry, a notary in the parish of Iberville on the 23d June, 1869, a certain tract of land or plantation situate and being partly in the parish of West Baton Rouge and partly in the parish of Iberville in this State, on the right bank of the Mississippi River fronting thereon, and forming the point known as Point Manchac, opposite Bayou Manchac, said tract of land being cultivated as a sugar plantation known as the Australia plantation, bounded on the upper side by lands of Fullier (exclusive of the Brackin tract containing about ninety acres), containing in all an area of fifteen hundred and one $\frac{34}{100}$ acres (1,501$\frac{34}{100}$), or seventeen hundred and seventy-four superficial arpents and $\frac{53}{100}$ of an arpent, and being composed of different tracts of land acquired by said Sosthene Allain as per plan of said plantation as surveyed by Auguste Wrotnoski in March, 1860, said plan being now in the hands of Felix Grima, a notary in this city:

Together with all and singular the buildings and improvements thereon, consisting of a brick sugar house and mill with slated roof, machinery, dwelling-house and outhouses, negro quarters, barns, stables, and other improvements and appurtenances thereto belonging or in anywise appertaining, and also all rights, ways and immunities thereto belonging, all personal property and effects on said plantation, and all the cattle, mules, houses, stock, wagons, tools, harness, and agricultural implements, &c., of whatever nature or kind now on said plantation. Which plantation and appurtenances were acquired by said Merrill, by purchase from Sosthene Allain and wife, per act passed before me, notary, on the third day of July, 1869. The titles to which plantation are detailed and described in the said act of purchase of said Merrill, with the nature of which titles Mrs. Allain is satisfied and

declares herself familiar, and does hereby accept the same without any warranty on the part of said Merrill, as above set forth, and renounces to any right of recourse against him in case of eviction of the real estate herein transferred to her, and binding herself to hold him, said Merrill, harmless on account of any claims which might be brought forward in regard to the other matters and things hereby transferred to her:

To have and to hold the said plantation and appurtenances under the said purchaser, her heirs and assigns forever. And the said Merrill declared that he hereby sells and conveys the said plantation and appurtenances unto the said Mistress Margaret D. Allain in accord-
554 ance with a decree of the district court of the United States for the district of Louisiana at the May term of 1869, in a suit wherein he, said Merrill, is the plaintiff and subrogee of the assignee in bankruptcy of A. S. Mansfield, and said Allain & wife are parties; and that the consideration of said sale remaining unpaid is thirty-three thousand dollars, the remainder being satisfied.

Now, therefore, in payment of said sum of thirty-three thousand dollars, she, said Mrs. Allain, has subscribed under date hereof three several promissory notes to her own order, and by her endorsed, each for eleven thousand dollars, payable respectively at one, two, and three years, at the Citizens' Bank of Louisiana, in this city, with interest thereon at the rate of six per cent. per annum after date until maturity, and thereafter, if not then paid, until final liquidation at the rate of eight per cent. per annum, the current interest at six per cent. per annum payable annually, which notes have been paraphed ne varietur by me, notary, for identification herewith, and have been deliv-
555 ered to said Merrill, who acknowledges the receipt thereof.

In case of suit for the recovery of the amount of said notes or of any part thereof, the said purchaser binds herself to pay the fees of the attorney, who may be employed to prosecute such suit, which fees are hereby fixed at five per cent. on the amount sued for.

Now, in order to secure the full and punctual payment of said notes, and all attorneys' fees, &c., vendors' lien and privilege, and special mortgage in favor of the said present vendor, and in that of the future holder or holders of said notes, are hereby retained on the said property, the said purchaser binding herself and her heirs not to sell, alienate or encumber the same to the prejudice of this act.

The said Mrs. Allain furthermore binds herself to keep the buildings and improvements on said plantation constantly insured against loss by fire, up to an amount not less than fifteen thousand dollars, and to transfer the policy or policies of insurance to said vendor, who
556 shall have the right of transferring the same in turn to any future holder or holders of said notes; and in case of failure or neglect on the part of said Mrs. Allain to have such insurance effected or renewed, the holder or holders of said notes shall be authorised to do so, and the reimbursement of all premiums paid for that purpose shall be secured by the mortgage herein retained.

Said Mrs. Allain does hereby dispense with the production of certificates of the recorders of the parishes of West Baton Rouge and Iberville, showing what mortgages or encumbrances, if any, are recorded against said property, and exonerates me, notary, from all liability in the premises. She, moreover, assumes the payment of all taxes in arrear or now due or coming due on said plantation, as an additional consideration of the sale.

And Merrill declared that he is married, but that his wife is a resident of Boston, in the State of Massachusetts, and has never acquired

557 any domicil here, and that she has no rights of any nature on his property.

Thus done and passed, in my office at New Orleans aforesaid, on the day, month, and year hereinbefore written, in the presence of James Fahey and Martin L. Ainsworth, competent witnesses, who sign these presents, with said appearers, and me, notary, after reading thereof.

(Original signed) M. D. ALLAIN.
AMOS B. MERRILL.
S. ALLAIN, JR.,
Per power of attorney.

M. L. AINSWORTH.
JAS. FAHEY.

E. G. GOTTSCHALK, *N. P.*

I, John Bendernagel, a notary public, and the custodian of national records of the parish of Orleans, do hereby certify the foregoing to be a true copy of the original act passed before the late Edward G. Gottschalk, notary, and now in my possession.

Witness my hand and seal at New Orleans on this 8th day of May, A. D. 1875.

[SEAL.] (Signed) J. BENDERNAGEL, *Not. Pub.*

558 *Document I.—Sale of plantation offered in evidence* offered in evidence *on behalf executors of Miller.—Filed June 6th*, '78.

STATE OF LOUISIANA:

Before me, Joseph Cuvillier, a notary public for the parish of Orleans, and the city of New Orleans, therein residing, personally appeared Mrs. Marguerite Dilia Kennedy, wife of Mr. Sosthene Allain, with whom she resides in the parish of West Baton Rouge, in this State, the said Mrs. Allain herein acting by virtue of authorization to her given by her said husband, by act passed on the twenty-seventh of April last (1871) before Austin Hunt, a notary public in for the parish of Iberville; a duly certified copy of which is hereto annexed.

And the said Mrs. Allain, authorized as aforesaid, declared that she does by these presents sell all legal warranty, and with subro-
559 gation to her rights and actions in warranty against all preceding vendors and other warrantors unto William Henry Aymar, of this city, here present and accepting, the undivided half of that certain tract of land or plantation situate, lying, and being partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, on the right bank of the Mississippi river, fronting thereon and forming the point known as Point Manchac; said tract of land being cultivated as a sugar plantation, known as the Australia Plantation, bounded on the upper line by lands of Valsin Fullier (exclusive of the Brackin tract, containing about ninety acres), containing in all an area of fifteen hundred and $\frac{34}{100}$ acres, or seventeen hundred and seventy-four superficial arpents and fifty-three hundredths of an arpent; and being composed of different tracts of land acquired by Sosthene Allain, as per plan of said plantation as surveyed by Auguste Wrotnowski in March, eighteen hundred and sixty, said place being now in the hands of Felix Grima, a notary public in the parish of Or-
560 leans, together with the undivided half of all and singular the brick sugar-house, with slated roof, machinery, dwelling-houses, negro quarters, barns, stables, and the improvements thereon, and all the cattle, mules, horses, stock, wagons, tools, harness, and agricultural

implements of whatsoever nature or kind on said plantation, which is the same acquired by the said Mrs. Allain by purchase from Amos B. Merrill, of Boston, Massachusetts, by act before E. G. Gottschalk, a notary public of this city, on the third of July, eighteen hundred and sixty-nine.

This sale is made for and in consideration of the price and sum of forty-two thousand dollars payable, fifteen thousand dollars cash, and twenty-seven thousand dollars in thirteen years with eight per cent. per annum interest from the first March last (1871), payable annually. In compliance with the above terms and conditions, the said Aymar has paid fifteen thousand dollars cash to the said Mrs. Allain, who ac-
561 knowledges the receipt thereof and grants acquittance therefore.

And for the balance, twenty-seven thousand dollars with the interest thereon payable annually, the said Aymar has furnished the *the* several promissory notes hereinafter described, subscribed by him to his own order, and by him endorsed, dated March first, eighteen hundred and seventy-one; one note for the said sum of twenty-seven thousand dollars, payable thirteen years after date, and thirteen other notes each for two thousand one hundred and sixty dollars each (being for the yearly interest on said sum of twenty-seven thousand dollars), the said interest notes being made payable respectively at one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, and thirteen years from their date. All of which fourteen notes bearing eight per cent. per annum from maturity, until paid, are made payable at the
562 domicil of the Bank of America in this city.

And the said notes were handed over unto to the said Mrs. Allain, who acknowledges the receipt thereof, after having been paraphed ne varietur by the notary undersigned for identity herewith.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of the said notes, or of any part thereof, the said Aymar binds himself to pay the fees of the attorney at law employed for that purpose, which fees are hereby fixed at five per cent. on the account sued for.

Now, therefore, in order to secure the punctual payment of the said notes at maturity, together with the interest and att'y fees, the said Mr. Allain, authorised as aforesaid, reserves her privilege of vendors and the said Aymar declared that he does by these presents mortgage, affect, and specially hypothecate in favor of the said Mrs. Allain, and to secure to the use and benefit of any and all future holder or holders
563 of the said notes the said Mrs. Allain here accepting for herself or others, not only the undivided half of the Australia plantation purchased by these presents but also the other half of the same plantation, which the said Aymar had purchased from the present vendor, by act dated July seventh, eighteen hundred and sixty-nine, before Selim Magner, then a notary public of this city, which entire plantation the said Aymar binds himself not to alienate or encumber to the prejudice of this act.

It is hereby agreed between the parties that Mrs. Allain shall have the right to occupy with her family during the space of three years, to be computed from the first of March last (1871), the main dwelling house on said plantation and its appurtenances, as well as a sufficient number of negro cabins as may become necessary to lodge her servants those of her family, but in case the said Aymar should hereafter sell the
564 whole of the above-described plantation before the expiration of the said three years, and after the execution of his purchaser's title deeds, should the latter require from Mrs. Allain the possession of

said main dwelling-house, its appurtenances, and the negro cabins above mentioned, she, the said Mrs. Allain, shall vacate the premises, but only after the expiration of three months to be computed from the day she shall have been notified in writing of the intention of Mr. Aymar's purchaser to have the possession of the property, the use of which hereby reserved to Mrs. Allain. During the space of three years above referred to, neither Mrs. Allain no' Mr. Aymar shall be bound to make any repairs to the dwelling-house and negro cabins above referred to, nor shall Mrs. Allain be required to give any security for the use by herself and family of the said dwelling-house and negro cabins.

By the hereunto annexed certificate from the recorder of mortgages for the said parish of Iberville, under date of April eighteenth,
565 eighteen hundred and seventy-one, it appears that there is no other encumbrance standing in the name of the said Mrs. Allain and recorded against the plantation above described than a special mortgage in favor of Mr. Amos B. Merrill to secure the payment of thirty-three thousand dollars, with interest; which mortgage the said Aymar has assumed by his act of purchase of the other undivided half, passed on the seventh of July, eighteen hundred and sixty-nine, before Selim Magner, then a notary public of this city.

Mr. Aymar binds himself to cause to be erased from the books of the recorder of mortgages both for the parish of West Baton Rouge and Iberville the above mortgage of thirty-three thousand dollars, as follows:

To the extent of eleven thousand dollars by the first day of July, eighteen hundred and seventy-three.

To the extent of eleven thousand dollars by the first day of July, eighteen hundred and seventy-four.

And to free entirely the said plantation from the effect of said
566 mortgage by the first day of July, eighteen hundred and seventy-five.

It is agreed by and between the parties hereto that in case the said Aymar should fail by the first day of July, eighteen hundred and seventy-five, to free the said plantation from the effects of thirty-three thousand dollars, then the said Mrs. Allain shall have the right to enforce, not only the payment of such of the interest notes above referred to as may be then due, but also the interest note falling due in the year eighteen hundred and seventy-six, and the note of twenty-seven thousand dollars which shall become due and demandable by the fact of the failure on the part of the said Aymar to free the above plantation of the mortgage of thirty-three thousand dollars, as herein above contemplated.

It is also hereby agreed by and between the parties, that Mrs. Allain shall have the right to require and to compel Mr. Aymar to pay by anticipation, and after thirty days' notice, any of the interest cou-
567 pon notes above referred to, provided the said Aymar be not required to pay by anticipation more than one interest coupon note in the same year.

All the taxes which are or may be now, or may hereafter become due on the said plantation, the said Aymar binds himself to pay.

According to the certificate of the recorder of mortgages for the parish of West Baton Rouge, also annexed to these presents, it appears that besides the mortgage for thirty-three thousand dollars above referred to, the undivided half of said plantation sold by these presents is subject to a judicial mortgage for sixty-seven dollars & fifty cents, with interest and costs, in favor of J. V. Duvalde, which mortgage the said Mrs. Al-

lain binds herself to have erased and cancelled in the shortest possible delay. Which is accepted by the purchaser.

Thus done and passed in my office on this ninth day of May, eighteen hundred and seventy-one, in presence of Theodule Buisson and George Guinault, competent witnesses residing in this city, who have signed these presents, together with the parties, and me, notary, after a due reading of the whole. At the moment of signing the foregoing act, the parties agree and covenant that should Mr. Aymar, before the expiration of the four years contemplated for the entire erasure of thirty-three thousand dollars, sell or convey the Australia plantation, or any portion thereof, he will then be bound to cause to be erased immediately the above mortgage of thirty three thousand dollars to the extent of the amount of such of the notes representing the said mortgage claim of thirty-three thousand dollars as will then be due & exigible.

(Original signed) M. D. ALLAIN.
WILLIAM H. AYMAR.

TH. BUISSON.
JOSEPH CUVILLIER,
Not. Pub.

A true copy from the original.
[SEAL.] JOSEPH CUVILLIER,
Not. Pub.

568 *Document J, offered in evidence on behalf executors of Miller.—Filed June 6th, '78.*

(See page 558.)

Document K.—Note filed June 6th, '78, offered in evidence on behalf executors of Miller.

21703.

$11,000.] NEW ORLEANS, *3rd July*, 1869.

One year after date I promise to pay to the order of myself at the Citizens' Bank of Louisiana, in this city, the sum of eleven thousand dollars and no cents, with interest thereon at the rate of six per cent. per annum from date until maturity; if not then paid to bear interest therefrom at eight per cent. per annum until paid, for value received.

(Signed) M. D. ALLAIN,
Per power of Attorney.

To authorize Mrs. Allain.
(Signed) S. ALLAIN, JR.

(Endorsements:)

E. G. Gottschalk, S. Magner, Gottschalk & Magner, notarial office, No. 158 Common st., New Orleans. Cap. 11,000, int. 440—11,440.

(Across the face:)

The payment of this note, amounting to eleven thousand ($11,000) dollars, is by consent prolonged for six months with 8 % interest from date until paid.

New Orleans, July 6th, 1870.
(Signed) WILLIAM H. AYMAR.

Ne varietur: Secured by mortgage duly stamped $.
New Orleans, 3d July, 1869.
(Signed) E. G. GOTTSCHALK, *N P.*

2619. M. D. Allain, 11,440, Jan'y 9. No. 4383. 6th district court, A and B. Filed 27th M'ch, 1873. (Signed) C. W. Colton, d'y cl'k. (Signed) M. D. Allain.

(Signed) William H. Aymar.

1703. Mrs. M. D Allain, $11,000.00, 665.50 int.—11,665.50; 3-6 July, 1870.

K 6894.
Filed June 6th, '78.
(Signed) K. LOEW, *D'y Cl'k.*

[U. S. int. rev, stamp, $2.00. U. S. int. rev. stamp, 50 cents. U. S. int. rev. stamp, $3.00.]

569 *Statement of H. D. Ogden offered in evidence by executors of Miller.—Filed June 6th*, 1878.

EDWARD J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN ET ALS.

Statement of facts by H. D. OGDEN, to be used on behalf of Grand Lake Coal Co.

John F. Miller had obtained a writ of provisional seizure in suit 2267 of the docket of the district court in and for the parish of St. James against William H. Aymar, and had under said writ seized 35 hogsheads of sugar. That subsequently Henry P. Raymond, subrogated to the rights of Mercer in suits of Mercer vs. Aymar, also seized said sugar. Wm. Rasbury et als. instituted suit in 4th district c't, No. 43440, claimed the sugar and damages against Miller & Redmond. Redmond being second seizing creditor desired to get rid of the first seizure, viz, that of Miller. Proposition was made to me as the attorney of Miller.

570 On examination of papers I concluded that it was to the advantage of my client to discontinue our seizure and to accept any additional security I might obtain to secure Miller's claim. I so stated to Miller, and his reply was, "I leave the whole matter in your hands; do what you think right." I thereupon accepted the note of Redmond and the pledge of the note of $11,440. I knew nothing of the history of the note $11,440 at the time, but asked Mr. Butler whether it had ever been paid by Aymar, and whether Redmond had the right to pledge it. The answer was that the note was Eastman's property, and that he had given it to Redmond with authority to pledge it. Miller was only informed of the arrangement after it was concluded, and then expressed his satisfaction.

X-examined by Mr. BRIGHT, counsel for Alter et als.:

571 I negotiated with Mr. Butler, att'y at law; after the terms were agreed upon between Mr. Butler and myself I saw Redmond; never saw Eastman; I think that Aymar and Redmond came to me together; Aymar seemed anxious to have the negotiation made.
(Signed) H. D. OGDEN.

572 *Document L.—Suit parish of St. James.—Filed June 6, '78.—Petition filed June 23d, '75.*

To the honorable the judge of the fourth judicial district court in and for the parish of St. James:

The petition of George Miller, who resides in the city of New Orleans, respectfully shows:

That he is the holder of a certain mortgage note for the sum of eleven thousand ($11,000.00) dollars, made at New Orleans on the 3d of July, 1869, by Mrs. Margaret D. Allain, wife of Sosthene Allain, and by her said husband duly authorized by & through Sosthene Allain, jun'r, the duly appointed attorney in fact of said Sosthene Allain, by act before Henry Desobry, a notary in the parish of Iberville, on 23d June, 1869, said note being payable one year after date at the Citizens' Bank of Louisiana, in the city of New Orleans, with interest thereon at the rate of six per cent. per annum from date until maturity, and at the rate of eight per cent. per annum thereafter until paid, as will more fully appear by reference to the note hereunto annexed and made part of this petition.

573 Your petitioner further shows that the said note is secured by vendor's lien and privilege and special mortgage by act of sale by Amos B. Merritt to said Mrs. M. D. Allain, passed before Edward G. Gottschalk, then a notary public in and for the parish of Orleans, on the 3d of July, 1869, on the following described property, viz: A certain tract of land or plantation situated and being partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, on the right bank of the Mississippi River, fronting thereon and forming the point known as Point Manchac opposite Bayou Manchac, said tract of land being cultivated as a sugar plantation known as the Australia plantation, bounded on the upper side by lands of Valsin Tullier, exclusive of the Bracklin tract, containing about ninety acres, and containing in all an area of fifteen hundred and one $\frac{34}{100}$ acres, and being composed of different tracts of land acquired by said Sosthene Allain as per plan of said plantation as surveyed by Auguste Wrotnoski,

574 in March, 1860, said plan being now in the hands of Felix Grima, a notary in the city of New Orleans, together with all and singular the buildings and improvements thereon, consisting of a brick sugar-house and mill with slated roof, machinery, dwelling-house and out-houses, negro quarters, barns, stables, and other improvements thereto belonging, mules, carts, &c., on said plantation. That said act of mortgage contains the clause de non aliundo, and in the event of suit for the recovery of the notes thereby secured, or of any part thereof, the said Mrs. Allain bound herself to pay the fees of the attorney, which are fixed at five per cent. on the amount sued for.

Your petitioner further shows that William H. Aymar, who resides in the parish of St. James, is indebted unto your petitioner in the amount of said note, to wit, eleven thousand dollars, with interest thereon, at the rate of six per cent. per annum, from 31 July, 1869, to the 6th of July, 1870, and from said 6th July, 1870, at the rate of eight per cent. per annum until paid, and the attorney's fees, viz, five per cent.

575 on the amount sued on for this. That the said Wm. H. Aymar purchased the said plantation from said Mrs. Allain, viz, one-half before Selin Magner, a notary public in the city of New Orleans, on July 7th, 1869, and the other half by Oct., before Joseph Cuvillier, notary public in said city, on May 9th, 1871, and by said act of July 7th, 1869,

before Magner, he assumed the payment of said mortgage note and the conditions thereunto attached.

Wherefore, your petitioner prays that the said William H. Aymar be cited; that after due proceedings had, and the legal delays, he be condemned to pay your petitioner the aforesaid sum of eleven thousand ($11,000.00) dollars, with interest thereon, at the rate of six per cent. per annum, from the 3d July, 1869, to the 6th of July, 1870, and at the rate of eight per cent. per annum from said 6th July, 1870, till paid, the attorney's commission five per cent. on the amount sued for, and costs of suit, and that there be judgment recognizing the vendor's lien, and privilege, and mortgage on the above described property in favor of
576 your petitioner, and that the said property be sold to satisfy the aforesaid claim, with costs; and your petitioner prays for all other and further relief.

And, as in duty bound.

(Signed) H. D. OGDEN & CHAS. G. OGDEN,
Att'ys for Plaintiff.

Citation.

STATE OF LOUISIANA.

Fourth jud. district court, parish of St. James.

GEORGE F. MILLER
vs. } No. 548.
WM. H. AYMAR.

The State and court aforesaid. To Mr. William H. Aymar of this parish:

You are hereby cited to comply with the prayer of the petition, whereof a true copy is hereunto annexed, or file your answer thereto within ten days from service hereof, in this court, at the court-house in this parish.

Given under my hand, officially, at the parish of St. James, this 23d day of June, 1875.

(Signed) F. B. COHEN, *Dy. Clerk.*

Sheriff's return.—Filed June 25th, 1875.

Received the within citation copy of petition, and citation annexed, on the 23d June, 1875, and on the 24th day of same month &
577 year served copies of said petition & citation at the domicile of Wm. H. Aymar situated in this parish of St. James, on the right bank of the Mississippi river, at about nine miles above the court-house of said parish, by delivering said copies in the hands of a person apparently above the age of fourteen years, living and residing in the house, and known to me by the name of Mr. William H. Aymar, the said William H. Aymar being absent at the time of service hereof.

Whereof I make this my return, at the parish of St. James.

(Signed) J. P. LANDRY, *C. Dy. Sheriff.*

Supplemental petition.—File / Nov. 21, '75

GEO. F. MILLER
vs.
WM. H. AYMAR. } No. 548.

Fourth judicial district court, parish of St. James.

STATE OF LOUISIANA.

To the honorable the judge of the fourth judicial district court for the parish of St. James:

The supplemental petition of Andrew H. Brown, who resides in New Orleans, and of Charles Whiting, who resides in the parish of St. Tammany, La., respectfully shows:

That since the filing of the above entitled and numbered suit,
578 the plaintiff, George F. Miller, late a resident of New Orleans, has died in said city, and that his succession has been opened in the second district court for the parish of Orleans, in which court petitioners have qualified and been confirmed as testamentary executors of the deceased.

Wherefore petitioners pray that this supplemental petition be filed; that they be made parties hereto as testamentary executors aforesaid, and they pray for judgment as prayed for in the original petition and for general relief.

As in duty bound.

(Signed) H. D. OGDEN & CHAS. G. OGDEN,
Att'ys for Pl'ff.

LEGENDER & POCHE,
Of Counsel.

Oath.

F. P. Poche, one of the counsel herein, being duly sworn, deposes and says that O. J. Flagg, judge of the fourth judicial district court of the State of Louisiana, is now absent from the parish.

(Signed) F. P. POCHE.

Sworn to & subscribed at the parish of St. James this second of November, 1875.

(Signed) N. S. LANDRY,
Judge of the Parish Court of St. James.

579 *Order.*

As within prayed for, it is ordered that the within petition be filed and that process issne according to law.

At chambers, parish of St. James, November 2d, 1875.

(Signed) N. S. LANDRY,
Judge of the Parish Court of St. James.

Citation.

STATE OF LA.

4th jud. dist. court, parish of St. James.

GEO. F. MILLER
vs. } No. 548.
WM. H. AYMAR.

The State and court aforesaid to Mrs. Wm. H. Aymar:

You are hereby cited to comply with the prayer of the petition, whereof a true copy is hereunto annexed, or file your answer thereto within ten days from service hereof, in this court, at the court-house of this parish.

Given under my hand officially at the parish of St. James this 2d day of November, 1875.

(Signed) Z. B. COHEN,
D'y Clerk.

Sheriff's return.—Filed Nov. 10th, 1875.

Received the within citation, copy of supplemental petition, & citation annexed on the 2d day of November, 1875, and on the 3d day of same month & year served copies of said petition & citation at the do-
580 micile of Wm. H. Aymar, situated in this parish of St. James, on the right bank of the Mississippi River, at about eight miles above the court-house of said parish, by delivering said copies in the hands of a person apparently above the age of fourteen years, living and residing in the same house with defendant, and known to me by the name of John Shuring, the said Wm. H. Aymar being absent at the time of service hereof.

Whereof I make this my return at the parish of St. James this 3d day of Nov'r, 1875.

(Signed) J. P. LANDRY,
C. D'y Sh'ff.

Extract from the minutes of Tuesday, December 7th, 1875.

Present, O. J. Flagg, judge.

GEORGE F. MILLER
vs. } 548.
WM. H. AYMAR.

Default taken against defendant.

Extract from the minutes of Monday, Decem'r 13th, 1877.

Present, O. J. Flagg, judge.

GEORGE F. MILLER
vs. } 548.
WM. H. AYMAR.

Default confirmed.

Memorandum of evidence in case of George F. Miller vs. William H. Aymar.

1°. Letters testamentary.
2d. Note.
3°. J. R. Winchester, sworn, says that he recognizes the sig-
581 nature of Wm. H. Aymar beneath the prolongation, &c., dated July 6th, 1870.
4. Act of sale.
5. Act of sale.
6. Act of sale.
Evidence closed.
(Signed) H. COHEN, *Clerk.*

The State of Louisiana to all whom these presents may come, greeting:

Whereas Andrew K. Brown and Charles Whiting, executors of the last will and testament of George F. Miller, deceased, have applied to the second district court for the parish of Orleans by petition, praying said court to grant letters testamentary therein:

Now know ye that the said Andrew K. Brown and Charles Whiting are hereby authorized and empowered to collect all the goods and effects which were of said George F. Miller, deceased, and to make *ad* just inventory thereof, and all other lawful acts to do and perform as testamentary executors of the said last will and testament.

Witness our hands and the seal of said court, at the city of New Orleans, in the year of our Lord one thousand eight hundred and
582 seventy-five, and the 100th of the Independence of the United States of America.

[SEAL.] (Signed) J. L. TISSOT, *Judge.*
FRANK PACE, JR., *Clerk.*

Judgment.—Rendered 13th December, '75.

Due proof having been given of the death of G. Miller, plaintiff in the above entitled and numbered cause, and of the appointment of Andrew K. Brown and Charles Whiting as his testamentary executors, and said executors having been made party plaintiffs in said suit according to law, two judicial days having elapsed since judgment by default was duly entered up against the defendant W. H. Aymar, and no appearance having been made nor answer filed, and the law and the evidence being in favor of plaintiffs and against the defendant, it is therefore ordered, adjudged, and decreed that plaintiffs, Andrew K. Brown and Charles Whiting, testamentary executors of the succession of George F. Miller, do have and recover judgment of William H. Aymar, in the sum of eleven thousand dollars with interest at six per cent. per
583 annum thereon from the 3d July, 1869, to the 6th of July, 1870, and at the rate of eight per cent. per annum from the 6th of July, 1870, till paid, and five per cent. for attorney's fees, and said sum & interests and costs of suit. And it is further ordered, adjudged and decreed, that to secure the payment of said sum and interests and attorney's fees, a mortgage and vendor's privilege be recognized in favor of plaintiffs on the defendant's Australia plantation, situated partly in the parish of Iberville in this State, and more fully described in the act of sale before S. Magner, notary public in New Orleans, on the 7th of July, 1869, and that said property be sold to pay and satisfy said claim in principal, interests, and attorney's fees.

Rendered in open court at the parish of St. James, the 13th December, 1875. Read and sign' in open court at said parish the 18th December, 1875.

(Signed) O. S. FLAGG,
Judge 2d Dist. Court.

584 I certify that the above is a true and exact copy from the originals now on file in the clerk's office, parish of St. James, this 22d September, 1877.

[SEAL.] (Signed) Z. B. COHEN, *D'y Clerk.*

Judgment N.—Offered in evidence on behalf of Miller's executors.—Filed June 6th, '78.

Fourth judicial district court, parish of St. James.

STATE OF LOUISIANA:

GEORGE F. MILLER *vs.* WILLIAM H. AYMAR. } No. 548.

Due proof having been given of the death of G. F. Miller, plaintiff in the above entitled cause, and of the appointment of Andrew K. Brown and Charles Whiting, as his testamentary executors, and said executors having been made party plaintiffs in said suit according to law. Two judicial days having elapsed since judgment by default was duly entered up against the defendant, W. H. Aymar, & no appearance
585 having been made nor answer filed, and the law and the evidence being in favor of plaintiffs and against the defendant, it is therefore ordered, adjudged, and decreed that plaintiffs, Andrew K. Brown and Charles Whiting, executors of the succession of George F. Miller, do have and recover judgment of William H. Aymar, in the sum of eleven thousand dollars with interest at six per cent. per annum thereon from the 3d of July, 1869, to the 6th of July, 1870, and at the rate of eight per cent. per annum from the 6th of July, 1870, till paid, and five per cent. for attorney's fees on said sum and interest and costs of suit.

And it is further ordered, adjudged, and decreed that to secure the payment of said sum and interests and attorneys' fees, a mortgage and vendor's privilege be recognized in favor of plaintiffs on the defendant's Australia plantation, situated partly in the parish of West Baton Rouge and partly in the parish of Iberville, in this State, and more fully described in the act of sale before S. Magner, notary public in New
586 Orleans, on the 7th of July, 1869, and that said property be sold to pay and satisfy *and satisfy* said claim in principal, interests, and attorneys' fees.

Rendered in open court at the parish of St. James, the 13th of December, 1875. Read and signed in open court at said parish, the 18th of December, 1875.

(Signed) O. J. FLAGG,
Judge 4th Jud. Dist.

A true copy.

Clerk's office, parish of St. James, this 20th day of December, A. D, 1875.

[SEAL.] (Signed) H. COHEN.
Clerk of C't.

STATE OF LOUISIANA,
Parish of West Baton Rouge:

RECORDER'S OFFICE.

I hereby certify that the within and foregoing judgment has been duly recorded in my office this 5th day of May, A. D., 1876, in record of mortgages No. 2, folio 786, entry No. 752.

As witness my hand and seal of office the same day and date.

587 [SEAL.] [Signed) O. BERNARD,
Recorder.

Pledge M.—Offered in evidence on behalf of Miller's executors.

Now, in order to secure the full and punctual payment of said promissory note at maturity, the undersigned does hereby pledge to George F. Miller the following property, to wit: A certain promissory note, drawn by Mrs. M. D. Allain, duly authorized by her husband, S. Allain, dated July 3d, 1869, payable one year after date, and amounting, on the 6th day of July, 1870, to eleven thousand four hundred and forty dollars, capital and interest, and bearing 8% interest on $11,000 (eleven thousand dollars) from that date until paid. Said note is secured by mortgage as per act before E. G. Gottschalk, notary public, under date of July 3d, 1869; said note endorsed by Wm. H. Aymar.

(Signed) H. P. REDMOND.

588 (Stricken out.)

589 *Testimony on behalf of the heirs of Miller.*

United States circuit court.

EDWARD J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN ET ALS. } No. 6894.

Testimony of William H. Aymar, taken on behalf of the heirs of Miller, in accordance with written consent between counsel, Nov. 5th, 1877, by C. W. Colton, phonographer.

H. D. Ogden, esq., for heirs of Miller; David Barrow, esq., for Edward J. Gay.

WILLIAM H. AYMAR sworn and examined on behalf of the heirs of Miller:

By Mr. OGDEN:

Q. Mr. Aymar, do you know anything about a certain promissory note for the sum of eleven thousand dollars, made at New Orleans on the third day of July, 1869, by Mrs. Margaret D. Allain, duly authorized by her husband, payable one year after date to her own order
590 and by her endorsed, bearing interest at the rate of six per cent. per annum from date until maturity, and therefrom at the rate of eight per cent. per annum, secured by mortgage and vendor's lien on a certain plantation situated partly in the parish of West Baton Rouge and partly in the parish of Iberville, as per act before E. G. Gottschalk, notary public for the parish of Orleans, on July third, 1869?

A. I assumed to pay that note, sir.

Q. You know the history of that note, then?

A. Yes, sir.

Q. Y That note was pledge to George F. Miller by H. P. Redmond. Will you please state the facts about that note; how it came into the possession of Redmond, and what money was used to get possession of that note? State all you know in relation to it.

A. In purchasing the Australia Plantation I assumed that spoken of. After the note matured I was unable to pay it. I had it renewed for a certain time. Had I better state all the circumstances about
591 that note?

A. The note was owned by Doctor Mercer, and he refused to renew without additional security. I offered to Mr. Generes, his broker, certain other notes signed by F. Eastman. After sundry interviews with Mr. Generes my additional security was accepted, and I was asked to sign a pledge, which I did. I believe the pledge stated that the eleven thousand dollar note was given by me in pledge to secure the other notes; but I never owned the eleven thousand dollar note and have never had it in my possession.

Q. Who had that eleven thousand dollar note in possession? In whose possession was it?

WITNESS. What time do you mean?

Mr. OGDEN. It was held by Doctor Mercer, was it not?

A. Yes, sir; Mr. Generes purchased it for Doctor Mercer.

Q. Afterwards in whose possession did it go?

A. Well, I believe it was sold to Mr. Redmond.

592 Q. Did you produce or give any money to Mr. Redmond to buy that note?

A. Not one cent.

Q. Was it not the note of Mr. Redmond after the settlement with Doctor Mercer?

A. Well, I believe that Mr. Redmond held the note for Mr. F. Eastman. I believe that F. Eastman furnished the money to purchase the note.

Q. After the maturity of the note did it ever come into your possession as held by you, or was it held by other parties?

A. It was never held by me; it has never been held by me. I will state this: That Doctor Mercer was about proceeding against the plantation, and I begged Mr. Eastman to try to purchase the note—all the paper held by Doctor Mercer—which I believe he did through his attorney, Mr. Butler. Mr. Butler was, I believe, acting for Mr. Redmond at the time he purchased the note.

Q. Were not Mr. Redmond and Mr. Eastman friends of yours and willing to assist you?

A. Mr. Eastman was always willing to assist me. He had been
593 a clerk of mine once, years previous.

Q. This note was pledged to Miller by Redmond?

A. I have been told so.

Q. Do you not know that Redmond came to obtain from Miller a postponement of the seizure on the ground that he would assume the payment of a judgment against him?

WITNESS. What judgment?

Mr. OGDEN. I mean a judgment of Miller against Aymar.

A. Mr. Eastman was trying to assist me in order to enable me to get along, and he was trying to assist me to pay Miller.

Q. This note was given in pledge by Redmond to assist you to pay Mr. Miller the debt really due to him?

A. Yes, sir; those are the facts of the case.

Cross-examined by Mr. BARROW:

Q. Mr. Aymar, you state (which is the fact) that this note was given to Doctor Mercer as collateral security to secure two notes held
594 by Eastman, drawn to your order, and by you endorsed. Was not that the fact?

A. No; Eastman had given me these notes, and I had deposited them with Mr. Generes as additional security. He required more security.

Q. Eastman had given you these two notes drawn to your order?

A. I presume they were drawn to my order; I have forgotten that now.

Q. How did you pledge this eleven-thousand-dollar note to secure these notes, if you did not hold the eleven-thousand-dollar notes?

A. That is a question I cannot understand yet; I never held the eleven-thousand-dollar note; it has never been in my possession.

Q. The debt for which this note was given to Miller was a debt of your own?

A. A debt of my own.

Q. Now, Mr. Aymar, I want you to think and see whether you have not confounded this note with another note of the same series?

A. No, sir; my memory is perfectly clear about these three notes on that plantation.

Q. What did you do with the other note? One of them Mr.
595, 596 Ames brought suit upon and got a judgment. Another was pledged to Doctor Mercer. Now, what became of the third note?

A. Mr. Alter holds the other one.

Q. Had Miller obtained a judgment against you in West Baton Rouge, and was it for that judgment that this note was pledged to him by Redmond?

A. I have forgotten whether Mr. Miller had obtained a judgment against me or not, but I know that I owed him a balance due for a boat-load of coal which I purchased from him.

(Mr. Barrow objected to this testimony so far as it referred to facts which are in writing, either in the record of the suit brought by Doctor Mercer on the Eastman notes, or in the act of pledge made by the witness to Doctor Mercer.)

597 *Testimony for complainant and intervenor.—Filed February 28th*, 1878.

United States circuit court, fifth circuit, district of Louisiana.

F. M. AMES, ED. J. GAY, SUBROGATED,
vs.
M. D. ALLAIN ET ALS. } No. 6894.

Testimony taken on behalf of the complainant, and also on behalf of Charles E Alter, under the 67th rule of practice for the courts of equity of the United States, by F. A. Woolfley, special examiner, duly appointed by the aforesaid court to take depositions of the witnesses in the above entitled cause.

NEW ORLEANS, *February 27th*, 1878.

Present, David N. Barrow, esq., complainants; George L. Bright, esq., on behalf of Chas. E. Alter.

ELMORE DUFOUR, a witness produced, sworn, and examined on behalf of complainant, deposes and says:

598 By Mr. BARROW:

Q. You are the executor of the late L. F. Generes, and have charge of his books and papers?

A. Yes, sir; I am, and I have.

Q. Is there anything on his books showing a transaction by which a note of Mrs. M. D. Allain for $11,000 was purchased and sold.

A. There is a transaction of a note of Mrs. M. D. Allain.

Q. State fully what that transaction is, as it appears upon the books or the memoranda of Mr. Generes.

(Mr. Bright, solicitor for Chas. E. Alter, objects on the ground that the entries on the books are not evidence against Charles E. Alter.)

A. I find on this discount book, on pages 54 and 55, the following entries: "July 14th, Mrs. D. Allain, mortgage assumed by W. H. Aymar, due January 14th, 1872; commission, $110; discount, $861.67; net proceeds, $1,028.33; gross account, $11,000." On the opposite side,

599 "Mrs. M. D. Allain, 14th and 17th January, 1872; Charles E. Alter, discount, $861.67; net, $10,138.33; gross, $11,000." That is the entry I find on the books.

Q. Is that all the entries on this book?

A. As far as that special note goes.

Q. Is there any entry on the book showing the payment of a check of Mr. Generes' for $1,544.47?

(Mr. Bright, solicitor for Charles E. Alter, objects on the ground that the entry in the book is not evidence against Charles E. Alter et. als.)

A. I find, on the 14th July, 1871, check No. 151, Citizens' Bank, in favor of Charles E. Alter for $1,544.47, which appears to be for interest, six per cent., on $11,660; eight days' interest at eight per cent, $19.50; protest, $3.30, making $682.80, and 188 days' discount on the note of $11,000, extended to the 14th and 17th January, 1872, $861.67; making $1,544$\frac{47}{100}$.

Q. From whom was the amount of $1,544.47 received by Mr. Generes?

A. I must infer that from the books. These amounts appear to

600 have been derived from a discount of two notes of Mr. F. Eastman, one for $7,500, and the other for $3,500, which netted $10,321.67, which appeared to the credit of W. H. Aymar.

Q. Do you know who discounted these notes? Do the *do the* books show who discounted these notes of Eastman?

A. Yes, sir; on the 17th July, 1871, they were sold to the Teutonia Insurance Co., who gave in payment two checks deposited in the Citizens' Bank, one for $5,000 and one for $5,431.67.

Q. How was the balance of the amount to Mr. W. H. Aymar's credit disposed of?

A. To various parties; among others, there was a check given to Mr. E. T. Merrick for $663.30 on the 13th July, which is marked interest and protest, one year, $11,000.

Cross-examined by Mr. Bright for C. E. ALTER:

Q. This book which you now refer to, and which you are using, is it in your handwriting?

A. No, sir.

Q. In whose handwriting is it?

A. Mr. Henry Generes; he was the book-keeper in the office.

Q. Do you know anything of what you have spoken of, except what you derive from the books?

A. The entry of the Allain note is in my handwriting, and the discount note, and memorandum. E. T. Merrick appears in pencil in my handwriting on that check No. 147.

Q. That is all that appears of your handwriting?

A. I think it is.

Q. Have you any personal knowledge of what you have spoken of, or do you only know from these books?

A. Nothing but what I saw in these books; I have an indistinct recollection of these things, but it is so far back that I don't remember them exactly.

Q. Do not these entries show that Charles E. Alter became the purchaser of that note?

A. I should rather infer that he was the holder of that note, and
602 that there was some extension in his hands, for I do not find a check for any $11,682.80 figuring anywhere in this transaction.

Q. These entries show that Mr. Aymar paid the interest for the renewal of the notes, do they not?

A. Yes, sir; the entries show that out of the proceeds of that money which was had of Aymar, the interest and protest was made to Mr. *Mr.* Merrick for whomsoever he represented; and the interest and protest, including advanced interest, to Mr. Chas. E. Alter.

Q. It appears there that Aymar had caused other notes to be discounted in order to raise money to pay the interest?

A. Yes, sir; for this sum $10,321.67, which is credited to Aymar, and which is debited to him in our running account.

Q. Do your books show that these for $7,500 and the note for $3,500 ever went into the hands of Dr. W. N. Mercer?

A. Yes, sir.

By Mr. BARROW, for complainant:

603 Q. Is there anything by which you can say for whom Mr. Generes was acting when he first acquired that note or held that note for Mrs. Allain; he must have received it from somebody?

A. That is a question I must confess I am unable to answer. It is now seven years ago, and the books would seem to indicate that the note was never in his possession individually, for he does not seem to have paid for the full note or received the amount of it.

Q. Who paid Generes for making the transaction?

A. Who paid the commission?

Q. Yes.

A. The commissions are charged to W. H. Aymar.

Q. How much were the commissions?

A. $110.

ANDREW HERO, Jr., a witness produced, sworn, and examined on behalf of Charles E. Alter.

By Mr. BRIGHT:

Q. State what you know relative to the transaction by which
604 Charles E. Alter acquired the note for $11,000 of your own knowledge?

A. Mr. Alter called to see me on the 13th July in reference to his buying this Mrs. Allain note from Mr. Merrill, who wished to have it paid to him or in some way settled that he might get the money. Mr. Alter concluded to buy it from Mr. Merrill, and he and Merrill came to

the office on that day. Mr. Merrill adviser Judge Merrick and directed the act of subrogation to be drawn up, which was executed on the 14th July. As I knew the note was to have been carried by Mr. Alter, and the accruing interest on it paid by Mr. Aymar at the time of the execution of *of* the act, that portion with reference to the interest that was to accrue was erased, as Mr. Aymar agreed to pay that in cash. The money for the note was paid to Mr. Merrill in my presence. The act has all the other details in it.

Q. What part did Aymar take in the transaction?

605 A. Only to intervene in the act, and acknowledged his continued liability, and promised to pay it at the new maturity. He was only seen at the time of signing.

Q. At whose suggestion was Aymar brought in to do that?

A. Mine; because I make it a rule in all acts of subrogation passed before me to have the drawer to be a party to it and recognize his continued liability, and also to prevent the possibility of his setting up that it was done at his instance.

Q. Do you know what Mr. Aymar's desire was about it?

A. Only from his being at the office on the date; that he wanted time to pay his debt, and that Mr. Merrill did not want to carry the note any longer.

(Mr. Barrow for complainant objects to all that part of the witness' testimony detailing conversations between himself and Mr. Alter as not binding upon us.)

606 Cross-examined by Mr. BARROW:

Q. How is it that this subrogation is only laid for $11,000, and the note and interest was a great deal more than that purchased?

A. At this time I should say, without having the note before me, that I believe the interest for one year had been paid on it, as the interest was payable annually upon the note, and that the holder had been or was to be paid at the time of the execution, the second year's interest.

DISTRICT OF LOUISIANA, *ss:*

I, F. A. Woolfley, special examiner duly appointed by the circuit court of the United States for the district of Louisiana, to take the testimony of Elmore Dufour and Andrew Hero, jr., witnesses on the part of the complainant, and Charles E. Alter, intervenor, do hereby certify that on the day named in the depositions hereto annexed I was

607 attended at the office of the clerk of the said circuit court by the counsel and witnesses aforesaid; that the witnesses were duly sworn and examined and their depositions reduced to writing, and that the signatures of said witnesses to their depositions were waived by consent of counsel.

New Orleans, February 27th, 1878.

(Signed) F. A. WOOLFLEY,
Special Examiner.

608 *Decree.—Filed January 14th,* 1879.

United States circuit court, district of Louisiana. In equity.

FRANK M. AMES, E. J. GAY, SUBROGATED, *vs.* MARGARET D. ALLAIN & AL. } No. 6894.

This cause came on to be heard at the last term of the court, and was

argued by counsel, and thereupon, on consideration thereof, the court finds as follows:

1st. As to the note for $11,000, payable in one year after it had been issued and its payment assumed by Aymar as a portion of the consideration for the Australia plantation, Aymar became the owner, by virtue of which ownership the mortgage privilege carried with the note, so far as relates to the concurrent or subsequent mortgages, became extinguished.

2d. As to the note for $11,000, payable in two years, owned by Alter, the pleadings, together with what I have found as the facts with reference to the other first-mortgage notes, entitle Chas. E. Alter to
609 be paid out of the funds with interest.

3d. And as to the third note for $11,000, payable in three years, having been bought, as the preponderance of the evidence shows, for the sum of $8,000, and $1,000 counsel fees by Aymar, and $3,000 having been paid thereon, the note being held as security for the future payments, was by operation of law reduced as a mortgage to $5,000 and $1,000 counsel fees, with interest upon that amount at five per cent. from 1st January, 1875, and as so reduced was passed to Gay, and to that extent is a lien upon the mortgaged property.

It is therefore ordered that the fund derived from the sale of the mortgaged property be first applied to the payment of the claims of Chas. E. Alter and Ed. J. Gay, subrogee, as above adjudged, and the residue rateably to Mrs. Peniston and Mrs. Allain's heirs, and it is referred to F. A. Woolfley, esq., master, to ascertain and report the several amounts accruing to the parties.

January 14, 1879.

(Signed) EDWARD C. BILLINGS,
Judge.

Master's report.—Filed January 22d, 1879.

610, 611 In the circuit court of the United States for the district of Louisia a.

F. M. AMES, E. J. GAY, SUBROGATED,
vs.
M. D. ALLAIN AND OTHERS. } 6894.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

The undersigned, who was appointed master "to ascertain and report the several amounts accruing to the parties" in said cause, respectfully reports:

That the parties, by their solicitors, appeared before him and submitted their claims, which were examined.

I find and report that there is due to Charles E. Alter and Edward J. Gay, from the proceeds of the sale ($28,800.00), the following sums, to wit:

To Charles E. Alter	$16,058 33
" Edward J. Gay	6,731 70

The residue, which is to be reported hereafter, after the payment of the costs of this suit, which are not yet ascertained, is to be paid to Mrs. E. F. Peniston and Miss V. E. Allain, in equal shares.

The claims of Charles E. Alter and Edward J. Gay are submitted herewith.

Respectfully submitted.

(Signed) F. A. WOOLFLEY, *Master.*

JANUARY 22, 1879.

612 *Chas. E. Alter's claim.*

5th d't c't.

CH'S E. ALTER *vs.* MRS. PENISTON & AL. } 7415.

Judgment	$11,000 00
8 %, 14 Jan., 1872, to 2d Sept., 1876, 4 y'rs, 232 days	4,087 12
	$15,087 12
5 % attorney's fees	754 36
	$15,841 48
Clerk's 5th d't c't	18 00
Sheriff's costs	5 00
Cl'k's fees U. S. c't c't, deposit by Allen	20 00
Do. U. S. marshal	20 00
Transcript 6th d't c't offered in evidence, paid by Alter	29 40
Paid Collin, stenographer, for testimony	51 40
Paid taking testimony of Ames	10 60
Paid taking testimony Walsh & al	7 70
Paid Bobbs, taking testimony of Eastman & al	29 75
Paid cl'k's fees, Alter v. Aymar, 7868, U. S. circuit court	5 00
Do. to clerk	20 00
Total due C. E. Alter	$16,058 33

U. S. circuit court, district of Louisiana.

613 F. M. AMES, E. J. GAY, SUBROGATED, *vs.* M. D. ALLAIN ET AL. } No. 6894.

Claim of Charles E. Alter, submitted to me January 21, 1879, and allowed; also submitted by me with report.

(Signed) F. A. WOOLFLEY, *Master.*

E. J. Gay's claim.

F. M. AMES, EDWARD J. GAY, SUBROGEE, *vs.* ✻ 6794.

Mrs. M. D. Allain, in account with Edward J. Gay & Co., for cash deposited with U. S. marshal & clerk U. S. cir. court & costs paid.

1876.

June 19.	To cash deposited with U. S. marshal, ⅔ costs	150 00
" 20.	" cash p'd clerk U. S. cir. court, ⅔ taxed costs	5 70

Sept.	1.	To cash p'd bill of O. Bernard, recorder W. B. Ronge, for certificate of mortgages		10 00
"	5.	" cash p'd bill of R. B. Holly, clerk, for copy of bill of intervention in ⁄ 6894		5 00
				$170 70
		To amount allowed by decree, principal	6,000 00	
		Interest at 5% from 1 Jan'y, 1875, to date	500 00	
				6,500 00
		Costs of marshal, paid by Ames		40 00
		Costs of clerk		26 00
				$6,736 70

New Orleans, Jan'y 20th, 1879.

(Signed) EDWARD J. GAY & Co.,
Per R. M. WALSH.

Claim of Edward J. Gay submitted to me Jan'y 21, 1879, and allowed to the extent of $6,731.70, referred to and submitted with report Jan'y 22, 1879.

(Signed) F. A. WOOLFLEY, *Master*.

614 *Vouchers to claim of E. J. Gay.*

NEW ORLEANS, *Sept. 5th*, 1876.

Received from Edward J. Gay & Co. five dollars for copy of bill of Charles E. Alter, in the nature of a bill of intervention, No. 6894, docket U. S. circuit court.

$5.00.

(Signed) R. B. HOLLY, *Ass't Clerk.*

United States circuit court, district of Louisiana.

NEW ORLEANS, *June 19th*, 1876.

FRANK M. AMES, ED. J. GAY, SUBROGATED,
vs.
MARGARET D. ALLAIN & OTHERS. } No. 6894.

Received from Ed. J. Gay & Co. one hundred and fifty dollars on deposit for account of marshal's costs in this suit.

$1.50.

(Signed) J. B. STOCKTON,
Deputy U. S. Marshal.

(Across the face, in red:) E. C., 383.

United States circuit court, district of Louisiana.

NEW ORLEANS, *June* 19, 1876.

FRANK M. AMES
vs.
MARGARET D. ALLAIN ET AL. } No. 6894.

615 In this case I certify that the taxed costs of clerk amount to five $\frac{70}{100}$ dollars

$5.70.

Attest:

, *Clerk.*

(Across the face in red:) E. C., 383.

Received payment of the amount from Edw. J. Gay, subrogee, this 19th June, 1876.

(Signed) F. B. VINOT,
Dy Clerk.

$10.00. Received from the Hon. S. B. Packard, U. S. marshal, Sept 2d, A. D. 1876, ten dollars, for making general certificate of mortgage on the Australia Plantation, owned by Wm. H. Aymar, and situated in the parish of West Baton Rouge, in the suit of Ames vs. Allain & others.

(Signed) O. BERNARD,
Recorder.

Approved: Sept. 2, '76.

(Signed) C. R. STEELE,
Dy Marshal.

Extract from chancery order book.—January 22, 1879.

F. M. AMES, E. J. GAY, SUBROGATED, *vs.* M. D. ALLAIN & OTHERS. } 6894.

The parties in interest in this case are hereby notified that F. A. Woolfley, who was appointed master, to ascertain and report the several amounts accruing to the parties in said cause, has this day filed his report.

616 *Motion and order.—Master's report approved.*

United States circuit court for the district of Louisiana.

F. M. AMES, EDWARD J. GAY, SUBROGATED, *vs.* M. D. ALLAIN ET AL. } No. 6894.

On motion of Geo. L. Bright, solicitor for Charles E. Alter, and Mrs. E. F. Peniston, and Miss V. E. Allain, and on showing to the court that the report of F. A. Woolfley, master, was filed on 22d Jan., 1879, and no opposition was made thereto:

It is now ordered, adjudged, and decreed that said report be approved and homol'gated, and that Charles E. Alter have and recover judgment for the sum of $16,058.33 *cents*, and that he be paid said amount out of the proceeds of the sale made by the United States marshal, which proceeds are $28,800, twenty-eight thousand eight hundred dollars.

That Edward J. Gay, transferee of F. M. Ames, have judgment for $6,731.70, six thousand seven hundred and thirty-one dollars and 70 cents, and that he be paid said amount out of the proceeds of the said
617 sale. And it is further ordered, adjudged and decreed that Mrs. E. F. Peniston and Miss V. E. Allain have and recover judgment for the balance of the proceeds of sale made by the marshal, after paying all legal costs and charges to be hereafter ascertained. And it is ordered that there be judgment against the intervention of Andrew K. Brown and Charles Whiting, testamentary executors of George F. Miller, and against that of R. M. Walsh, and that they pay the costs of their interventions.

March 1, 1879.

(Signed) EDWARD C. BILLINGS,
Judge.

Petition for appeal.—Filed March 8, 1879.

United States circuit court, district of Louisiana. In equity.

FRANK M. AMES, EDWARD J. GAY, SUBROgated,
vs
MARGARET D. ALLAIN & OTHERS. } No. 6894.

To the hon. the judges of the circuit court of the United States for the district of Louisiana.

The petition of Edward J. Gay, complainant by subrogation in the above numbered and entitled cause, respectfully represents:

618 That he is ag'rieved by the final decree rendered by this hon. court on the 3d day of March, 1879, in the above numbered and entitled cause. He respectfully prays for an appeal therefrom to the Supreme Court of the United States at its next term, to be holden at Washington City, and that the said appeal may be a supersedeas, said fund ordered to be distributed by the said final decree, being now in court, he prays that the court determine the amount of the bond to be given, and that he have leave to file the same within the legal delay, with good and sufficient security, and for all such further orders and decree as in the premises may be granted.

(Signed) DAVID N. BARROW,
Sol. for Edward J. Gay.

Order.

An appeal to operate as a supercedeas is allowed in this case, as prayed for, and, according to law, returnable to the Supreme Court of the United States on the 2d Monday of October, 1879, being the next term of said court, the appellant giving bond in the sum of

619 $5,500, with surety conditioned as the law directs.

March 8, 1879.

(Signed) EDWARD C. BILLINGS, *Judge.*

Service of citation of appeal waived.
N. O., Sept. 23, 1879.
(Signed) G. L. BRIGHT,
Att'y for C. E. Alter and Miss Allain & Mrs. Peniston.

Bond for appeal.—Filed May 16, 1879.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Edward J. Gay, a resident of the parish of Iberville, State of Louisiana, and Isaac H. Stauffer, are held and firmly bound, jointly and severally, unto Charles E. Alter, Mrs. Fergus Peniston, and Mrs. Emma Felicie Allain, Charles Whiting, and Andrew K. Brown, adm'rs of estate Miller, and the Grand Lake Coal Company, in the sum of five thousand five hundred dollars, lawful money of the United States of America, to be paid to the said Charles E. Alter, Mrs. Fergus Peniston, Mrs. Emma Felicie Allain, Charles Whiting and Andrew K. Brown, adm'r' of estate Miller, and the Grand Lake Coal Company, their heirs, executors, administrators, and

620 assigns, for which payment well and truly to be made, we bind

ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated the (15) fifteenth day of May, in the year of our Lord eighteen hundred and seventy-nine.

Whereas the said Edward J. Gay having heretofore, to wit, on the 8th day of March, 1879, taken an appeal to the Supreme Court of the United States, from and to reverse the decree rendered on the third day of March, 1879, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of Frank M. Ames, Edward J. Gay, subrogated, vs. Margaret D. Allain & als., No. 6894, of docket thereof: Now, the condition of the above obligation is that if the above bounden Edward J. Gay shall prosecute said appeal to effect, and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

621 (Signed) EDWARD J. GAY. [L. S.]
(") J. H. STAUFFER. [L. S.]

Signed, sealed & delivered in the presence of—
(Signed) J. A. CHARBONNET.
(") H. C. MICHEL.

622 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 621 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Frank M. Ames, Edward J. Gay, subrogated, vs. Margaret D. Allain et al., No. 6894 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 7th day of October, A. D. 1879.

[SEAL.] F. A. WOOLFLEY,
Clerk.

I, Edward C. Billings, United States judge for the district of Louisiana, do certify, that Francis A. Woolfley, whose named is signed to the above certificate as clerk of the circuit court of the United States, for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court. That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 7th day of October, A. D. 1879.

EDWARD C. BILLINGS,
Judge.

623 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Charles Whiting and Andrew K. Brown, testamentary executors of the late George F. Miller, and the Grand Lake Coal Company, greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a petition and order for an appeal, filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Frank M. Ames, Edward J. Gay, subrogated, is complainant and appellant, and Margaret D. Allain and others are defendants and appellees, to show cause, if any there be, why the decree rendered against the said Edward J. Gay, subrogated, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 27th day of September, in the year of our Lord one thousand eight hundred and seventy-nine.

W. B. WOODS, *Judge.*

624 (Indorsed:) United States circuit court. No. 6894. Frank M. Ames, Edward J. Gay, subrogated, vs. Margaret D. Allain et al. Citation of appeal.

Marshal's return.

Received Sep. 29, 1879, by the U. S. marshal, and on Sept. 30th, 1879, I served a true copy of the within citation of appeal on Charles Whiting, Andrew K. Brown, testamentary executors of the late George F. Miller, and the Grand Lake Coal Company, appellees herein, by handing the same to H. D. Ogden, esq., of the law firm of H. D. & C. G. Ogden, attorneys for the aforesaid appellees in person, in the city of New Orleans, district of Louisiana.

E. S. CURRY,
D'y U. S. Marshal District of Louisiana.

Personally appeared before me E. S. Curry, a deputy United States marshal for the district of Louisiana, who makes oath, that he served a copy of the within citation of appeal on Chas. Whiting, Andrew K. Brown, the testamentary executors of the late George F. Miller and the Grand Lake Coal Company, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal, District of Louisiana.

Sworn to and subscribed before me this 30th day of September, 1879.

F. A. WOOLFLEY,
Comm'r U. S. Circuit Court, District of Louisiana.

(Indorsement on cover:) No. 1025. Edward J. Gay, appellant, vs. Charles E. Alter, Mrs. Fergus Peniston, Mrs. Emma Felicie Allain, Charles Whiting, & Andrew K. Brown, executors of George F. Miller, deceased, and the Grand Lake Coal Company. Louisiana C. C. U. S. Filed 25th October, 1879.

SUPREME COURT OF UNITED STATES.

No. 1025.

EDWARD J. GAY, APPELLANT,

versus

CHARLES E. ALTER, MRS. FERGUS PENISTON, MRS. EMMA FELICIE ALLAIN, CHAS. WHITING AND ANDREW K. BROWN, EXECUTORS OF GEORGE F. MILLER, DECEASED, AND THE GRAND LAKE COAL COMPANY, APPELLEES.

Appeal from the Circuit Court of the United States for the District of Louisiana.

APPELLANT'S BRIEF.

DAVID N. BARROW,
H. J. LEOVY,
Counsel for E. J. Gay.

A W Hyatt, Print, 88 Camp St, N O—15,506

SUPREME COURT OF UNITED STATES.

No. 1025.

EDWARD J. GAY, APPELLANT,

versus

CHARLES E. ALTER, MRS. FERGUS PENISTON, MRS. EMMA FELICIE ALLAIN, CHAS. WHITING AND ANDREW K. BROWN, EXECUTORS OF GEORGE F. MILLER, DECEASED, AND THE GRAND LAKE COAL COMPANY, APPELLEES.

Appeal from the Circuit Court of the United States for the District of Louisiana.

APPELLANT'S BRIEF.

STATEMENT.

Amos B. Merrill sold on 3d July, 1869, by notarial act before Edward G. Gottschalk, notary, to Mrs. Margaret D. Allain, wife of Sosthene Allain, the following real estate:

A certain tract of land or plantation situated, and being partly in the Parish of West Baton Rouge and

partly in the Parish of Iberville, in the State of Louisiana, on the right bank of the Mississippi River, fronting thereon and forming the point known as "Point Manchac," opposite Bayou Manchac, said tract of land being cultivated as a sugar plantation known as the "Australia Plantation," bounded on the upper line by lands of Valsin Tullier (exclusive of the Bracken tract containing about ninety acres , containing in all an area of fifteen hundred and one 24-100 acres (1,501 24-100), or seventeen hundred and seventy-four superficial arpents and 53-100 of an arpent, and being composed of different tracts of land acquired by said Sosthene Allain, as per plan of said plantation, as surveyed by Auguste Wrotnowski, in March, 1860, together with the buildings and improvements thereon, consisting of a brick sugarhouse and mill machinery, etc.

The consideration of said sale was thirty-three thousand dollars, for which said Margaret D. Allain executed on said 3d of July, 1869, and endorsed in blank her three promissory notes, payable at the Citizens' Bank, with interest at the rate of six per cent. per annum from date until maturity, and thereafter, if not then paid until final liquidation, at the rate of eight per cent. per annum, the current interest at six per cent. per annum being payable annually. In case of suit for the recovery of said notes or any part thereof, the said Mrs. Allain bound herself to pay the fees of the attorney employed to prosecute such suit, which fees were fixed at five per cent. on the amount sued for.

One note matured one year after date.

One matured two years after date.

One matured three years after date.

All said notes and the attorney's fees were secured by the vendor's lien and privilege, and special mortgage in favor of the said vendor, and in that of the future holder or holders of said notes, and the purchaser bound herself not to sell, alienate or encumber the said property to the prejudice of said act.

See Exhibit A, R. pp. 3, 4.

On 7th July, 1869, Mrs. Margaret D. Allain sold to William H. Aymar the undivided half of the above described property. The consideration of which sale was the sum of thirty-six thousand three hundred and twenty dollars, and interest as set forth, of which thirty-three hundred and twenty dollars was cash, and for the balance of thirty-three thousand dollars and interest, said Aymar assumed to pay the notes of said Mrs. Margaret D. Allain, as above, and also assumed the mortgage.

Exhibit B, R. pp. 6, 7.

On the 9th May, 1871, said Mrs. Margaret D. Allain sold to said William H. Aymar the other undivided half of said "Australia Plantation," the consideration of which sale was forty-two thousand dollars, payable fifteen thousand dollars cash and twenty-seven thousand dollars in thirteen years, with eight per cent. interest from March, 1871, payable annually. In compliance with the terms, Aymar paid the cash and exe-

cuted his note for the twenty-seven thousand dollars, and to represent the interest, executed thirteen notes, each for two thousand one hundred and sixty dollars, payable respectively each year to the maturity of first note.

To secure these, Aymar mortgaged, not only the undivided half of the property purchased, but also the other undivided half which he had previously purchased.

In said act said Aymar bound himself to cause to be erased the mortgage securing the three Margaret D. Allain notes, as follows:

To the extent of eleven thousand dollars by the first day of July, 1873.

To the extent of eleven thousand dollars by the first day of July, 1874.

And to free said plantation entirely from the effects of said mortgage by the first day of July, 1875.

Exhibit C, R. pp. 8, 9, 10.

Frank M. Ames having become the holder of the note of Mrs. Margaret D. Allain for $11,000, maturing three years from 7th July, 1869, filed in the Circuit Court of the United States, for the District of Louisiana, his bill against the said Margaret D. Allain and William H. Aymar, to foreclose the mortgage, on January 21st, 1873, and on the 24th May, 1873, obtained a decree directing a sale of the mortaged premises to pay and satisfy said note of eleven thousand dollars, with one year's interest thereon at six per cent., and the remainder of said interest on said promissory note at eight per cent. per annum,

from 3d July, A. D. 1871, until paid, and for attorney's fees at five per cent. on said sum and interest and costs, and giving judgment in solido against said Margaret D. Allain and William H. Aymar for any amount remaining unpaid after the sale of the said mortgaged property.

Bill, R. p. 1; Decree, pp. 16, 17.

Frank M. Ames having transferred this decree to Edward J. Gay, an execution issued thereon on 19th June, 1876, and the Marshal seized the Australia plantation and was proceeding to sell the same, when Charles E. Alter, who claimed to own the note of Margaret D. Allain, maturing two year's after date, filed on July 11th, 1876, a bill in the nature of a bill of intervention against Edward J. Gay, subrogated to right Frank M. Ames; Mrs. Emma Felicia Allain Peniston, wife of Fergus Peniston, and Victoria E. Allain, sole heirs of Margaret D. Allain, who had died, William H. Aymar, and against Andrew K. Brown and Charles Whiting, Testamentary Executors of Geo. F. Miller, and S. B. Packard, United States Marshal.

The bill sought an injunction and a distribution of the proceeds of the sale of the plantation, in the manner hereafter set forth. An agreement of parties set aside the injuction, and the sale having taken place the property was sold on the 2d September, 1876, to Charles E. Alter, the complainant in the bill of intervention, for the sum of twenty-eight thousand eight hundred dollars. Of which, after deducting $2,492 18 amount taxes and

costs, the balance of $26,307 82 was deposited, and is the fund to be distributed.

R. pp. 18. 19.

The bill of Charles E. Alter, set up the original decree against Mrs. Allain and Aymar.

The transfer thereof by Ames to Edward J. Gay.

That the decree was rendered on one of the three mortgage notes included in the mortgage from Mrs. Margaret D. Allain to Amos B. Merrill. That the note due at one year after maturity was paid, cancelled and annulled by Wm. H. Aymar, who had assumed the payment of same, and said note was then held by the executors of Geo. F. Miller, against whom and said Aymar, fraud is charged in obtaining on said note a judgment in the Parish of St. James. That he had obtained a judgment in the Fifth District Court of Orleans, against the heirs of Mrs. Allian, on the note maturing two years after date, for the sum of eleven thousand dollars, with interest at the rate of eight per cent. per annum, from the 14th January, 1872, until paid, and five per cent. attorney's fees on principal and interest and costs, with vendor's lien and right of mortgage on the property.

The bill further proceeds:

Art. 10. Your orator shows that he is informed, believes and charges that on or about the 3d June, 1874, Frank M. Ames sold the aforesaid judgment, rendered in his favor to Henry P. Redmond and Frederick Eastman, purchasing for the defendant,

William H. Aymar, for the price of eight thousand dollars—three thousand dollars of which was paid on or about the 3d June, 1874, and the balance to be paid thereafter, and consequently there can only be due on said judgment the sum of five thousand dollars. The bill avers, Gay was aware of this fact when he purchased, and is wrongfully attempting to collect the whole amount of the judgment.

R. pp. 21, 22, 23, 24.

The executors of Miller answered the bill of Alter, and joined with them the Grand Lake Coal Company as the true party to whom Henry P. Redmond pledged the said note of Mrs. Margaret D. Allain, maturing one year after date and assumed by said Wm. H. Aymar. Denies any fraud in obtaining the judgment on said note in St. James Parish, and they deny said note was ever paid in whole or in part, or the mortgage cancelled.

They ask that they be decreed entitled to be paid said note, interest and costs.

R. pp. 41, 42, 43.

Wm. H. Aymar answered, denying the articles of the bill, and "further answering, respondent specially and particularly denies that Henery P. Redmond and Frederick Eastman, or either of them, purchased from Frank M. Ames, for this respondent, the note or judgment referred to in Article 10, of said intervention of Charles E. Alter herein."

Filed January 9th, 1877, R. pp. 44, 45.

Edward J. Gay answering, admitted the averments of the bill in Arts. 1, 2, 3, 4 and avers that, the transfer to Charles E. Alter, complainant, of the note held by him was made under the following circumstances and for the following purposes: "That at the time the complainant, Chas. E. Alter, was a large creditor of William H. Aymar, one of the defendants in this case, holding other mortgage securities of said William H. Aymar; that said Aymar, who had in the acts between himself and Mrs. Margaret D. Allain, assumed to pay all three of these notes secured by mortgage on the property described in said bill, as averred and set forth in said bill to conceal the fact of payment of said note, procured said complainant, Charles E. Alter, to appear in said transfer and to accept same, but said William H. Aymar furnished the money, with which said note was purchased, and which, as set forth, was the full amount of same, in principal and interest, and said transaction was in truth and in fact a payment of said note by said debtor, Aymar, and thus said note was extinguished, and ceased to exist; that said complainant never gave said Aymar or Amos B. Merrill any valuable consideration for same, but same was by said Aymar left in the hands of said complainant, and whatever amount may be realized from the property sold as aforesaid, is to enure to the benefit of said Aymar, by payment of his liabilities to said Alter in other transactions, which this respondent avers is illegal and inequitable; that said Aymar was the party bound for the payment of said notes.

Admitting other matters set up in the bill as to the note falling due one year after date and held by Miller's executors, the answer proceeds:

X. Your respondent avers that he is ignorant of all transactions which may have occured previous to his becoming the owner of the judgment of Frank M. Ames vs. Margaret D. Allain et als., as set forth, but he is informed and verily believes that it is not true that any sale of said judgment was ever made by said Ames to Henry P. Redmond and Frederick Eastman, purchasing for William H. Aymar, as charged in said bill and said allegation, is specia ly and praticularly denied.

XI. Your respondent specially denies that he had the knowledge of the pretended sale, as aforesaid, at the date of the transfer, but admits that he was informed that some transactions had taken place relative to said note between said Ames and parties other than those set forth in the bill, but said negotiations never resulted in any complete agreement, said parties being unwilling to carry out their proposition. That no sale of said judgment was made to any one prior to the sale and transfer to your respondent, and said judgment, interest and costs are due this respondent, as claimed in said execution, and same should be paid over to him in full by said Marshal."

R. pp. 48, 49, 50.

Mrs. Peniston and Miss Allain answered, setting up that they are the holders of the notes made by W. H. Aymar in the second sale from Mrs. Allain to him of

$27,000, and for $2160, payable in three, four, five, six, seven, eight, nine, ten, eleven, twelve and thirteen years. They admit Alter's claim; assert Gay's claim is good only for $5000, and after paying Alter and Gay, the balance be paid to them on their second mortgage.

R. p. 51.

On a hearing, the Court found:

1st. As to the note for $11,000, payable in one year after it had been issued, and its payment assumed by Aymar as a portion of the consideration for the Australia plantation, Aymar became the owner, by virtue of which ownership the mortgage privilege carried with the note, so far as relates to the concurrent or subsequent mortgages, became extinguished.

2d. As to the note for $11,000, payable in two years, owned by Alter, the pleadings, together with what I have found as the facts, with reference to the other first mortgage notes, entitle Charles E. Alter to be paid out of the funds with interest.

3d. And as to the third note for $11,000, payable in three years, having been bought, as the preponderance of the evidence shows, for the sum of $8000 and $1000 counsel fees by Aymar, and $3000 having been paid thereon, the note being held as security for the future payments, was, by operation of law, reduced as a mortgage to $5000, and $1000 counsel fees, with interest upon this amount at five per cent. from 1st January, 1875, and, as so reduced, was passed to Gay, and to that extent is a lien upon the mortgaged property.

It is therefore ordered, that the funds derived from the sale of the mortgaged property, be first applied to the payment of the claims of Chas. E. Alter and Edward J. Gay, subrogee, as above adjudged, and the residue ratably to Mrs. Peniston and Mrs. Allain's heirs, and it is referred to F. A. Woolfley, Esq., master, to ascertain and report the several amounts accruing to the parties.

R. p. 20.

The report having been made and confirmed, Edward J. Gay has appealed.

ASSIGNMENT OF ERRORS.

Edward J. Gay being the only appellant, it is only so far as the decree is against him that it can be reviewed.

13 How. 150.

In 6 Wal. 568, the Court said:

We shall confine our opinion to the objections to the decree, taken in the argument for the appellants. According to the rule of this Court, the appellee can ask nothing here but what the decree gave him. It is the appellants who complain. The questions which we are to examine, are such as they present for our consideration. The position of an appellee in this Court is simply defensive. It is only where both parties appeal that a case is open here for examination.

The errors assigned by him are to be found, 1st. In the allowance of the claim of Charles E. Alter; 2d. In the reduction of the claim of Edward J. Gay, and they are both in the facts and in the law.

ARGUMENT.

The finding of the Court on the first note must stand. But the facts connected with it should be brought to the view of this Court, since they have some influence on the other part of the case in showing the relation of the parties to one another, and the condition of Aymar. We therefore consider, first :

I.

The note falling due one year after date, held by Miller and Brown, executors.

The transcript No. 4383, Sixth District Court, (R. pp. 102 to 124) entitled W. N. Mercer vs. F. Eastman et als., shows the note for $11,000 fell due on the third and sixth July, 1870, on which day its payment was extended six months. (R. p. 111). That on the 9th February, 1872, long after its maturity, William H. Aymar, having possession of same, pledged it to Dr. Mercer to secure the payment of three notes of Frederick Eastman, given by Eastman to Aymar for rent. R. p. 102. As shown above, Aymar had assumed the payment of this as well as the other notes given by Mrs. Allain to Merrill.

It is plain, therefore, this note had no legal existence in the hands of Mercer. It was extinguished when Aymar acquired it. Mercer could transfer no greater rights than he had acquired. Redman took it from Mercer, together with the Eastman notes, but it was so

much waste paper. Redman was subrogated to Mercer's rights on 28th May, 1874. He became plaintiff in suit No. 4383.

R. p. 121.

From which suit said Redmond realized $3608 13.

R. p. 152.

The note for $11,000 and the mortgage were legally extinguished when pledged to Mercer.

The acquisition of the judgment in the case No. 4383, by H. P. Redmond, was for account of Eastman, who was a judgment debtor of Dr. Mercer, but Aymar had nothing to do with it.

The testimony of Frank N. Butler fully sustains this position. The account produced by Butler shows money to the credit of Redmond, placed there by Eastman. Butler states in accounting for this money: "I am almost certain that Mr. Aymar could not possibly have had that amount ($3,500) of money at that time, from my knowledge of his impecunious condition at that time." R. p. 151. He says Aymar was doing no business except planting. He says he paid the whole of the $3500 given him by Eastmen to Dr. Mercer. R. p. 150. Eastman had requested him to purchase with this $3500 the claim of Dr. Mercer in suit No. 4383 in the name of Redmond. R. p. 151. (The amount $1635 as printed in record is error; it should be $3500). Redmond says, speaking of the $11,000 note acquired the same time the judgment was acquired from Mercer, answering interrogatory 4: "I was not the owner but I

was the holder of it. The note was purchased from Dr. Mercer with money furnished by F. Eastman, and purchased in my name by my attorneys, Lacy & Butler." R. p. 76. Again, to 5th cross-interrogatory, he says: "Aymar did not arrange the Mercer claim and suit, but Eastman did, as I have stated. I did not know Aymar in the matter, and I have stated all the facts. That Eastman gave me the $3500 which I placed with Lacy & Butler." R. p. 76. Eastman, in answer to the question: Did you not become subrogated to the rights of Dr. Mercer? says: "I did. I paid for it. He says he paid thirty-five hundred dollars to Dr. Mercer, and it was subrogated to Redmond." R. p. 150. Again, he says he gave Frank N. Butler thirty-five hundred dollars, and directed him to buy a note held by Dr. Mercer against him, and a judgment against Aymar.

Thus we have three witnesses, all testifying at different times and apart from one another, and all sustaining the position that the purchase of the Mercer judgment and the Australia note held in pledge were purchased by Eastman, in the name of Redmond, with Eastman's money, and for Eastman, and that William H. Aymar had nothing to do with it. There is error, therefore, in the conclusion that Aymar purchased these judgments through Eastman. They belonged to Eastman, and the $3608 13, credited on the 2d June, 1874, in Butler's account with Redmond, was Eastman's, received, as shown above, from the suit of Mercer vs. Eastman & Aymar. R. pp. 150–122.

These facts are of no consequence as to the discussion of the point under consideration, but being brought out in connection with the history of said note are noted, because they have considerable importance when we come to consider the alleged sale of the Ames note for $8000 and $1000 counsel fees, as found by the Court.

II.

The note held by Charles E. Altar, complainant in the bill of intervention.

As shown above, Gay, in his answer, averred that he was informed that, in the transfer of the note to Charles E. Altar, Aymar furnished the money, and that said note was thus paid and extinguished.

The death of Mr. Generis, the broker who made the transaction, deprived us of a full and explicit exposition of the transaction. Merrill is also dead. We have the testimony of Altar on his own behalf; that of Defoure, and the books of Generis. Alter, himself, when asked from whom he acquired the note, says: From Aymar, through his broker, L. F. Generis. R. p. 168. Q. Aymar held the note at the time you acquired it, then? A. Yes, sir. It is true, at the suggestion of his counsel, he attempts to explain this unequivocal declaration of a fact. But his explanation is by no means satisfactory. He but describes the cloak in which the transaction was afterwards disguised. He says he did not pay the whole face and interest of the note. "It was a plain matter of purchase by discount

of the paper." R. pp. 168–169. To the question, Did Mr. Merrill take less than the face of the note and the interest that was due on it? he answered: "It was at a discount; I think it was ten per cent. discount off the face of the note." The checks and memorandum produced by Alter, when recalled, show that he paid to Merrill, besides the $11,000 principal, $682, which is the exact amount of interest and cost of protest, R. p. 171. Merrill, then, did not discount the note to Alter, but Alter did receive ten per cent. for the money used to purchase the note. When the note was delivered by Generis to Alter, Alter was paid $1544 47. R. pp. 171 and 172. And when we turn to L. F. Generis' books, we find he was acting for Aymar. Testimony of Defoure, R. p. 203. This $1544 47 was paid by a check in favor of Chas. E. Alter, and this $1544 47 was the funds of Wm. H. Aymar. We think the true transaction was that Alter loaned Aymar the money to take up the note, and Aymar paid him for the loan $1544 47 and gave him the note as security.

When, however, they came to make the transaction before Hero, the form in which the papers now stand was adopted. Hero says Aymar paid the interest, and that was the reason it was erased from the act. But the check for the interest is the check of Alter. R. pp. 170, 171. Generes was the broker for Aymar, and gave Alter the check for the $1,544 47. R. p. 203. Document S produced by Alter dated July 14, 1871, has the ini-

tials L. F. G. on it. R. p. 172. This evidence certainly goes far to establish the truth of the averments of Gay's answer, and were it not for the act of subrogation, would leave no doubt of the extinguishment of this note. It is for the Court to say how far it recognizes this act as a mere cloak. We do not controvert the point that Alter loaned the money to Aymar, because that is shown by his checks. But we hold, the note was in reality paid to Merrill, and as to third parties, extinguished and the mortgage cancelled.

III.

The Ames judgment, Gay subrogated, on which the property was sold, and which produced the proceeds to be distributed.

The points presented as to this claim, are three:

1st. That no sale of said judgment from Ames was ever finally concluded prior to the sale to Edward J. Gay.

2d. If sold, it was not sold to Wm. H. Aymar, but to other parties; and,

3d. Whether Wm. H. Aymar or other parties had purchased under the conditions, they having failed to carry out their agreement, and having declined and abandoned the contract, the sale was no longer binding on Ames, and he was at liberty to dispose of the judgment.

As the lower Judge found that Aymar was the purchaser, we shall consider the last position first.

It is shown that the sale was never carried into effect further than the payment of the three thousand dollars. Many propositions had been made to purchase this judgment, as graphically stated by Ames in his letter July 21st, 1875. "Who is this Mr. Butler? I have not heard his name mentioned before. What is the plan? Is it to promise a small sum now, with an additional one ninety days, hence? At the expiration of that time delay eight or ten months, and then propose half the sum? The proposition fourteen months ago was to pay $3000 cash, and all expenses, and $5000 on or before January 1st, 1875. Now the proposition is from some party to pay $1000 in thirty days, and $2000 in ninety days, or in other words, a reduction of $2000 and interest, and expenses to be paid by us; that is, if I understand the proposition. I think we had better sell the place for the most it will bring in December next, rather than submit to any such sacrifice now." R. p. 138.

The proposition, the Court considered, which purchased the judgment, was that made by Elder, and alluded to above. It was made on the 7th and 8th May, 1874, through Judge E. T. Merrick, R. p. 130, and is as follows:

"NEW ORLEANS, *May 7th*, 1874.

"JUDGE E. T. MERRICK,

"*Attorney for F. M. Ames, New Orleans:*

"SIR—I am instructed to accept the proposition mentioned by you to-day for the entire claim of Mr. Ames

against Australia Plantation and W. H. Aymar, the present owner, to-wit: The price of eight thousand dollars, and the fees payable, three thousand dollars in cash, within thirty days or less time, the balance to be paid between this time and next January, all the papers to be held for the deferred payments.

"Whatever may be realized from your lien on the sugar, will be considered as part of the first cash payment.

"The party understands that the 'fees' will not exceed five per cent. on the whole amount of the claim. Upon your approval of this agreement, the party will immediately make his arrangements to prepare funds, and expects to be able to settle for the cash payment in a few days.

"Respectfully,

"THOS. H. ELDER, *Broker.*"

"NEW ORLEANS, *May 8th*, 1874.

"JUDGE E. T. MERRICK:

"SIR—In addition to the proposition written you yesterday, and accepted by you for the settlement of the claim of Ames against the Australia Plantation, it is mutually understood that your claim for fees is one thousand dollars ($1000), which is to be settled, half in sixty to ninety days from this time, and the remaining half by or before 1st January next.

"Respectfully,

"THOS. S. ELDER, *Broker.*"

Under these propositions nothing further was ever done, except the payment of the $3000. No transfer of the judgment was ever made or demanded. The party, whoever it was, afterwards abandoned the contract or agreement, and declined to act under it. The $3000 was paid June 3d, 1874, by Frank N. Butler. R. p. 69.

On March 27th, 1875, Merrick writes Ames:

"If Aymar was the party, he set up no claim to the judgment. Alter says, he engaged Aymar, and Aymar undertook negotiations with Judge Merrick for the sale of this decree to him, Alter. R. p. 167.

"We have had numerous promises that something should be done towards the payment of the decree in chancery, but Aymar and his friends have failed to make any other payment than that paid over to you." R. p. 69.

On July 16, 1875, Merrick writes Ames:

"Since my arrival here I have, by to-day's mail, another proposition of compromise from Mr. Butler of the Aymar judgment or decree. He proposes for his client, in lieu of former contract, to pay $1000 cash, $2000 in ninety days, in addition to the $3000 paid. Note, suit and decree to be retained by me until payment, and then turned over to Butler for his client. Butler's client says he can carry this out without fail." R. p. 69.

On 29th July, 1875, Frank N. Butler telegraphed Ames:

"No crop nor seed on Australia. Mules and carts

sold for taxes, and taken away some time since. Am told place will not bring seven thousand dollars; offer made Judge Merrick, and court costs; best I can do." R. p. 70.

It is plain, therefore, the agreement was not carried out, but actually declined. Now, if Aymar was the party, as the Judge finds, how can he get the benefit of a contract never executed by him, but which he abandoned and declined to carry out?

In Byrd vs. Craig, 1 N. S. La. Reports, p. 625:

If a party refuses complying with his part of the contract, the other may decline his; and the subsequent conduct of the former will not remove the obligation of the latter.

In Moreau vs. Chauvin et al., 3 R. La. Reports, p. 160, the court say:

The contract is a synallagmatic one (just as this was) in which the resolutory condition is always implied, in case either of the parties fail to comply with his engagement. The party in regard to whom the contract has not been executed, has the choice either to compel the other to the execution of the agreement, if it be possible, or to demand its dissolution, with damages. Civil Code, Arts. 1920, 2041.

It was not necessary that Ames should have put the party *in mora*. His declarations and subsequent abandonment of the first contract was an active breach

which dispensed with the formality of the default, and after that he could not compel a performance on the part of Ames.

In Green vs. Fonbere, 2 An. 958, the court held:

"After the defendant declared his inability to fulfill the agreement, and signified in so positive a manner that he would not stand to it, the plaintiff was not bound to procure and tender the goods bargained for."

Garcia vs. Champomier, 8 La. R. 519.

Chase vs. Turner, 10 La. R. 23.

New Orleans and N. Railroad Co. vs. Ganath & Co., 18 La. 513.

Civil Code, of 1870, Art. 1926 (1920). "On the breach of any obligation to do or not to do, the obligee is entitled either to damages, or, in cases which permit it, to a specific performance of the contract, at his option, or he may require the dissolution of the contract, and in all these cases damages may be given where they have accrued, according to the rules established in the following section."

There was here, at most, an agreement to sell, which was never carried out. The purchaser failed to pay the price; Ames did not make him the transfer; when he notified Ames through Butler, that he would not comply with the Elder offer, he was in default, and could not claim a performance. But that is exactly what the Court has granted him by its decree. Ames has been held to the performance of a contract that Aymar (adopting the Court's finding) has failed to comply with.

By this failure, Aymar is benefited, for he not only reduces the principal of his debt, but only pays five per cent. interest on the amount he failed to pay up, while he was paying eight per cent. on the original indebtness. No title having passed, Ames held the judgment, and was relieved from the Elder proposition. The most, it seems to us, that could be claimed in equity by Aymar, if he was the party represented by Elder and Butler, would be, to have the $3000 credited on his indebtedness. There is, consequently, manifest error in the decree reducing Gay's claim to $5000 and $1000 attorney's fees with five per cent. interest from 1st January, 1875.

We now recur to our propositions in their order:

1st. That no sale of said judgment from Ames was ever finally concluded prior to the sale to Edward J. Gay.

Butler, we submit, is the witness having the best information on this subject. There was much negotiation before any definite proposition was made. This was made through Elder, the broker, and is stated in full above. But this agreement was never completed. Ames retained the judgment for security of the payment of the deferred payments. The $3000 was paid, but no fees, or the balance ever paid.

Judge Merrick says, speaking of the negotiations relative to this judgment: "There was one which had reference to the *conditional* sale, as I understood it, at the time." R. p. 129. He says, p. 130: "The $3000 was paid, the fees were never paid. The con-

tract, further than the payment of the three thousand dollars, fell through so far as Ames was concerned, I, the judge, was never informed who the purchaser was, at that time, at least." (R. p. 131). He knew that Butler was counsel for the purchaser. He says the parties never called upon him to complete the transaction. And to the question: Did you ever call upon them to complete their part of the agreement, he says, "I think there was a demand made by Col. Race, in writing. This matter was spoken of between Mr. Butler and myself. I mean the completion of it. It seems that they were unable to comply with their contract on their part, and I think he assented to it." R. p. 132. In the cross-examination, to the question whether it was not understood no transfer was to be made until the whole amount should be paid, he says the proposition of the broker says: "All papers to be held by you as security for the deferred payments. I think he said, I think you will be perfectly secure, because you will hold everything in your hands until the money is paid, or something to that effect." R. p.

We have already shown that Aymar did not consider there was any sale binding Ames, since he undertook to negotiate for the purchase of same for Alter. It can be demonstrated that Butler equally considered there was nothing to prevent Ames selling the decree.

As shown by Alter's testimony, Aymar finally introduced him to Mr. Butler, and Mr. Butler undertook to negotiate with Judge Merrick. He says he authorized

Butler to give forty-five hundred dollars; he paying Butler a fee. R. p. 168.

Judge Merrick writes Ames, April, 1876, just before the transfer to Gay :

"Mr. Butler, after seeing your dispatch to us, said he would keep his offer of $4500 for the Australia judgment open for one week," etc. R. p. 70.

This is clearly Alter's proposition. Now, if Butler considered the judgment sold to his client, Aymar, how could he negotiate a purchase for his client, Alter?

Thus, it is evident, the party had abandoned the original proposition to purchase. Ames did not insist on the sale, but he still held the judgment, and was entertaining other propositions for its purchase. About this time Edward J. Gay made him the proposition, which resulted in the transfer to him.

See Gay's letter, March 23d, 1876. R. p. 71.
See Telegram, April 6th, 1876. R. p. 71.
See Gay's letter, April 6th, 1876. R. p. 71.

It follows, then, Ames was the owner of the judgment, and could and did sell same.

What rights the party paying the $3000 on account of the contemplated purchase had, is a question to be considered hereafter.

If any other than Aymar, he would seem to have a clear right to demand its return, unless Ames could show, as he urged and claimed, that his failure to carry out the contract had caused him damages to fully that

amount, or that the advantages derived by him from the sugars received from the Mercer seizure fully compensated him.

See Ames' letter, May 11th, 1876. R. p. 74.

2d. If there was a sale, Aymar was not the purchaser, but Redman for Eastman was.

That Aymar should have been brought into the various matters, to the extent of appearing in the interest of some of the parties who were endeavoring to purchase the judgment, is not strange. Ames seems to have been pressing for his debt. A friend holding the debt might wait upon him. This position is fully exemplified by the transaction by which Alter became interested in the third note. The testimony of Elmore Dufour shows that Alter made the negotiation, to say the least of it, in the interest of Aymar, and to grant him the indulgence that the holder of the note was not willing to accord. William H. Aymar paid to Alter the discount for the extension of the note—p. 5. Aymar paid the interest and protest on Alter's note, $663 30. So that Aymar, interested himself, and even sent the telegram mentioned, amounts to nothing.

Elder, the broker, says in answer to the question: You say in that letter of May 7th, "I am instructed to accept the proposition; by whom were you instructed?" R. p. 148.

A. "By Mr. Aymar, sir; he was particular, though, that I should understand that he was not the principal in that matter." pp. 11, 12. And this is what is relied

upon to show the negotiation at $5000, $3000 cash, and fees of $1000 was that of Aymar. The $3000 was paid by Butler, and he, we submit, must have known best who was the party, and whose money was being paid out. After stating the agreement to purchase the judgment, at the instance of Eastman, for account of Redmond, and that the transfer was only to be made when the $5000 should have been paid, he was asked the question. p. 140:

Q. "Is it not to your knowledge that Eastman and Redmond were but the representatives of Mr. Aymar?"

A. "It is not. On the contrary, I had every reason to believe that they were acting in their own interest, either Mr. Eastman for Mr. Redmond, or Mr. Redmond for Mr. Eastman, or separately, but not for Mr. Aymar. I will state that Mr. Aymar, I believe, was fully aware of what was going on;" just as he was in the transaction when Alter obtained his note.

At page 143, Butler says he paid to Judge Merrick the $3000; that he communicated directly with Judge Merrick, and with no one else but Eastman; did not consult with Aymar. Aymar took no part in the transaction, except that he seemed willing for Redmond to acquire the note and mortgage. And in his subsequent examination, Butler says to the question: "Was not Redmond really Aymar?" A. "I don't think so, sir; never had any reason to believe that he was."

Both Redmond and Eastman testify that the transaction was for Eastman, and not for Aymar.

Thus, we think it established, if there had been a sale, it was not to Aymar, but to Eastman.

We now reach the question.

Should the claim of Ames be credited with the $3000? We do not pretend that if the judgment would be subject to the credit in the hands of Ames, it is not subject to the credit in the hands of Gay. But if we have demonstrated, as we believe we have, that Aymar was not the party making the offer of $8000, that the money paid on account, $3000, was not the money of Aymar, but that of Eastman, it follows, that although Eastman might have a claim against Ames for the amount paid, Ames should be permitted to receive from the mortgage property the whole of his claim.

At the time of the sale to Gay, neither Ames or Merrick knew exactly how this $3000 was to be regarded. If Aymar was the purchaser, as Ames seems to have supposed, but of which he knew nothing of his own knowledge, then it was a simple payment; but if, as the truth showed, Eastman was the party, then Ames must pay this money back, unless he had some legal claim to oppose to Eastman. Ames was advised by Judge Merrick, relative to this claim of Eastman, for the return o the $3000 that "he would be entitled to retain, under our law, so much as will indemnify him for a non-compliance on his part. See letter A A. R. p. 74.

Conceding, therefore, that Gay knew all the particulars of this transaction, that Ames and Judge Merrick knew, at the time of his purchase, it simply amounted

to this: that $3000 had been received by Ames on account of a proposition to purchase the judgment for $8000, $3000 cash, balance payable by 1st January, 1875, the payment of fees of Merrick, etc., of $1000 and costs; but whether this was a proposition from Aymar or from another, they did not know.

Ames, however, wished and did guard himself against any claim by Gay, if either a payment be established or a claim for an interest in the judgment successfully asserted by a third person.

Gay states the matter thus, Doc. F, R. pp. 182, 183: "He (Ames) entered into an explanation of his position, stating he still held one of the original notes of $11,000 of Mrs. Allain which had been assumed by Wm. H. Aymar. I asked him particularly about this $3000, which he was said to have received. Mr. Ames told witness that he had been in negotiation with parties long prior to that, and had agreed to sell the note for a certain price, which I understood to be $9000. And that he had been paid $3000 on account. But that the parties had entirely failed to carry out their agreement, and that he considered they had forfeited what they had paid, and that he considered the note his property."

Ames had noted that the $3000 was to remain with him, and when some difficulty arose as to the meaning of the clause, he wrote Judge Merrick: "You are authorized to accept $5000 for the note, under this condition: Gay to guarantee me against any loss or expense

in case the party who paid the $3000 should bring a suit to recover the money or any portion thereof." Under this view, the simple question is, can Aymar or the holders of the other notes claim that this judgment shall be reduced for an amount which was never paid thereon, and for the reimbursement of which, Gay, the present holder, may be held liable? It was when, by subsequent information and development of evidence, that Gay, becoming convinced that Aymar had not made the payments, and knowing that this claim was being pursued, made the arrangement with Butler, representing Eastman. If Eastman could recover, the amouunt must be allowed in the note. We address ourselves to the facts of the case. They establish a right in Eastman to be reimbursed his money, unless he caused Ames or Gay loss by his non-compliance with the sale. This was not the case, as appears from the fact that the property sold for a price large enough to reimburse the holder, more than the $9000 which Eastman had agreed to pay Ames for the judgment. So Ames, or Gay representing him, having received over the $9000, Eastman must have his money back. It was this claim that was settled by Gay for $1000. He had an interest to settle it, and he is entitled to the benefit of the settlement. Under no circumstances can he lose his $1000, if it could be said that the settlement should enure to the benefit of all persons interested in the funds. See Gay's statement, R. p. 183.

It is sought to show that Aymar paid the $3000 from

the accounts and exhibits produced by F. N. Butler. Against this view, which is only attempted to be established by inference, we have the positive testimony of Butler, Eastman and Redmond. The payments of Aymar's debts therein, are fully accounted for by the testimony of Eastman and Butler. They are such as grew out of the transaction with Mercer, and they were debts agreed to be paid notably, the costs in Miller's suit. Miller had a sequestration on the sugar, which was under seizure, and which Eastman by Redmond was to receive. It was competent for Miller, before releasing his sequestration, to make such terms as he could. Eastman says Aymar was largly in his debt. He would necessarily seek, as he says, to get his money back. In this arrangement he got the advantage of the sugar, and, as he supposed, was acquiring a note against the Australia plantation. This note, however, we have seen, had no legal existence at that time.

CONCLUSION.

Your Honors will find this a very volumious record, not because there are so many questions of fact in the case, as because Alter was upon an exploring expedition, and many matters are run out in the evidence with the hope of making some discovery. We believe the material facts are embraced in the foregoing, and the evidence quoted, and other evidence in the record, will sustain these positions.

I.

That the first note, now held by the Grand Lake Coal

Co., was extinguished when Dr. Mercer received same as a pledge from Wm. H. Aymar, and same could not be issued by Aymar, so as to carry with it any mortgage.

II.

That the judgment, under which the property was sold, was good, and subsisting for the full amount of same, and the proceeds should be applied to its payment in full.

III.

Should the Court, however, consider the note of Alter not paid, then the proceeds of the sale should be first applied to the payment of costs, taxes, etc., and the balance divided pro rata between these two notes.

Under no circumstances could any reduction of the judgment of Ames be made over the $3000.

Respectfully submitted,

DAVID N. BARROW,
H. J. LEOVY,
Counsel for E. J. Gay.

UNITED STATES SUPREME COURT.

No. 1025.

FRANK M. AMES,
EDWARD J. GAY, SUBROGATED, APPELLANT,

vs.

MARGARET D. ALLAIN AND OTHERS.
CHARLES E. ALTER, MRS. EMMA PENISTON AND MISS VICTORIA ALLAIN, APPELLEES.

Brief for the Appellees.

GEO. L. BRIGHT,
Counsel for Appellees.

January, 1889.

L. Graham, Brief Printer, 127 Gravier street.

Copy of agreement between Counsel, and of the sale by AMES to GAY, which the printed transcript, p. 17, states cannot be found. The agreement and the copy of this sale are filed in the Clerk's office of this Court.

AGREEMENT OF COUNSEL.

EDWARD J. GAY, Appellant,
vs,
CHARLES E. ALTER, MRS. FERGUS PENISTON, MRS. EMMA FELICIE ALLAIN; CHARLES WHITING and ANDREW K. BROWN, Executors of GEORGE F. MILLER, deceased, and The Grand Lake Coal Company.

Supreme Court,

No. 1025.

It is hereby agreed that the annexed transfer and subrogation from Frank M. Ames to Edward J. Gay is the transfer and subrogation forming a part of the record in this case, and which is stated at page 17, printed record, to be missing, and it is agreed said copy hereto annexed shall form a part of the transcript, as if same had been copied and printed there.

It is further agreed that the decree signed by the Court is identical with the decree entered May 24th, 1873, as printed at pages 16 and 17 of the transcript, and said signed decree is dispensed from the record.

DAVID N. BARROW,
HENRY J. LEOVY,
Counsel for E. J. Gay.

GEO. L. BRIGHT,
Counsel for Mrs. Peniston, Miss Allain and Charles E. Alter.

ACT OF SALE.

STATE OF LOUISIANA,
Parish of Orleans—City of New Orleans.

Be it known, That on this 17th day of June, in the year of Our Lord, 1876, and of the independence of the United States of America, the 100, before me, Nicholas Browse Trist, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the

witnesses hereinafter named and undersigned, personally came and appeared Edwin T. Merrick, of this city, herein acting in the name and behalf and as the duly authorized agent and attorney in fact of Frank M. Ames, of Canton, in the county of Norfolk, and commonwealth of Massachusetts, by virtue of the annexed power of attorney, executed on the 8th day of April, 1876, and acknowledged on the same day before James B. Bell, a commissioner of deeds for the State of Louisiana in said commonwealth;

Who declared that, in consideration of the sum of fifty-five hundred dollars, lawful money of the United States to him in hand paid, at the execution of these presents, by Edward J. Gay, of this city, he does by these presents sell, transfer, cede, assign and set over, in the name and behalf of his said constituent, unto the said Edward J. Gay, all the right, title, interest, claim, and property whatever, which the said Frank M. Ames has in and to a certain judgment or decree, rendered May 24th, 1873, and signed May 29th, 1873, in the suit in Equity in the Circuit Court of the United States, Fifth Circuit and District of Louisiana, entitled—

Frank M. Ames
vs.
Margaret D. Allain, wife of Sosthene Allain, Sosthene Allain and Wm. H. Aymar. } No. 6894.

The said decree being to enforce a mortgage in favor of said Frank M. Ames for the amount of the mortgage note held by him, to wit: the sum of $11,000, interest, costs and attorney's fees, upon the Australia plantation, lying and being in the parishes of West Baton Rouge and Iberville, in this State, as described in said decree.

And the said Edwin T. Merrick does hereby moreover subrogate the said Edward J. Gay in and to all the rights, actions, liens, privileges, remedies and mortgage which result from said decree and the note upon which it is based, against the defendants in said suit and against the said Australia plantation, hereby fully authorizing and empowering the said Edward J. Gay to use, enjoy and exercise the said rights, actions, liens, privileges, remedies and mortgages in the same manner and to the same extent as they might or could have been by the said Frank M. Ames himself.

Thus done and passed in my office at New Orleans, the day, month and year first above written in the presence of John G. Wilson and Benjamin Olivier, competent witnesses, who hereunto sign their names with the appearers and me, said notary, after reading of the whole.

(Signed) E. T. MERRICK, Att'y for Frank M. Ames.
J. G. WILSON.
BENJ. OLIVIER.
N. B. TRIST, Not. Pub.

UNITED STATES SUPREME COURT.

No. 1025.

FRANK M. AMES,
EDWARD J. GAY, SUBROGATED, APPELLANT,
vs.
MARGARET D. ALLAIN AND OTHERS.
CHARLES E. ALTER, MRS. EMMA PENISTON AND MISS VICTORIA ALLAIN, APPELLEES.

Brief for the Appellees.

STATEMENT.

On the 3d July, 1869, Margaret D. Allain bought the Australia plantation from Amos B. Merrill, and in part payment of the price made and delivered to him three notes secured by mortgage each for $11,000, payable respectively at 1, 2 and 3 years.

The note payable at *one* year is represented in these proceedings by Brown & Whiting, executors of Geo. Miller.

The note payable in *two* years is represented by Charles E. Alter.

The note payable at *three* years is represented by the plaintiff Frank M. Ames, Edward J. Gay, subrogee.

Upon the note for *three* years for $11,000, Ames obtained a judgment with mortgage lien and privilege on the Australia plantation, p. 16.

His judgment was rendered against Margaret D. Allain, the maker of the note, and against Wm. H. Aymar, because Aymar subsequently purchased the plantation from Mrs. Allain, and assumed the payment of the three notes for $11,000 each, which Mrs. Allain had made.

Upon the note for *two* year for $11,000, Charles E. Alter obtained a judgment against the heirs of Mrs. Allain, she having died, with mortgage lien and privilege on the Australia plantation, p. 128.

Upon the note for *one* year Brown & Miller, executors, obtained a judgment against Wm. H. Aymar, who had assumed its payment, p. 199.

Edward J. Gay, subrogated to Ames issued an execution on his judgment and sold the plantation. It brought $28,800, page 19.

Before the sale Charles E. Alter intervened and alleges, p. 21,

1st. That the note at one year was after its maturity paid by Aymar, who had assumed it, and its reappearance in the form of a judgment in favor of Brown and Miller, executors, is a fraud. This is the note represented by Brown & Miller, executors.

2d. That the judgment in favor of Ames, Gay, subrogee, representing the three year note was sold by Ames to Aymar, one of the judgment debtors, for $8000, of which $3000 were paid, leaving only a balance due to Ames for the judgment, of $5000. That the sale and the fact that $5000 only were due to Ames were well known to Gay when he purchased the judgment.

Mrs. Emma Felicie Allain, wife of Fergus Peniston, and Victoria Allain intervened, claiming that they are the owners of fourteen notes made by Aymar, one note for $27,000, and thirteen for $2160 each, secured by vendor's lien and special mortgage on the Australia plantation given by Aymar for the price of the plantation bought by him from Mrs. Allain, p. 51.

Mrs. Peniston and Miss Allain, the heirs of Mrs. Margaret Allain hold these notes, and claim the second mortgage on the plantation. The first mortgage secures the three notes of $11,000 each.

They desire to lessen the amount of the first mortgage in order to be paid something for their second mortgage. They allege that the claim of Edward J. Gay, subrogated, should be reduced to $5000, because Ames sold the judgment to Aymar, the judgment debtor, for $8000, and he received $3000, leaving

$5000 due, and Gay was informed of this when he purchased from Ames for $5000.

R. M. Walsh intervened, p. 78. He alleges that Ames sold his claim, note, judgment and mortgage to Henry P. Redmond for $8000—$3000 cash and the balance to be paid at a future time. He says Redmond paid $3000 and consequently became the owner of ⅜ of the judgment—that notwithstanding the sale and transfer made by Ames to Redmond, nevertheless Ames pretended to be the owner of the whole judgment and to sell it to Gay—that Redmond transferred to him, Walsh, the ⅜ of said judgment.

We will show that this person, Walsh, is a fraudulent intervenor, got up by Gay to suit his purposes, and that he is in reality Gay.

We call the attention of the Court to the facts alleged by him, for when we will have shown that Walsh is really Gay, we will ask the Court to take certain facts recited by him, as established.

The inferior Court found as follows, Transcript, p. 206.

"1st. As to the note for $11,000, payable in *one* year after it had been issued and its payment assumed by Aymar as a portion of the consideration for the Australia plantation, Aymar became the owner, by virtue of which ownership, the mortgage privilege carried with the note, so far as relates to the concurrent or subsequent mortgages, became extinguished.

2d. As to the note for $11,000, payable in *two* years, owned by Alter, the pleadings, together with what I have found as the facts with reference to the other first mortgage note, entitle Charles E. Alter to be paid out of the funds with interest.

3d. And as to the note for $11,000, payable in *three* years, having been bought as the preponderance of the evidence shows for the sum of $8000, and $1000 counsel fees, by Aymar, and $3000 having been paid thereon, the note having been held as security for the future payments was by operation of law reduced as a mortgage to $5000 and $1000 counsel fees, with interest upon that amount at five per cent. from 1st January, 1875, and as so reduced was passed to Gay, and to that extent is a lien upon the mortgage property.

It is therefore ordered, that the fund derived from the sale of the mortgage property, be first applied to the payment of the claims of Charles E. Alter and Edw. J. Jay, subrogee, as above adjudged, and the residue rateably to Mrs. Peniston and Mrs. Allain's heirs, and it is referred to F. A. Woolfley, Esq., master, to ascertain and report the several amounts accruing to the parties."

From this judgment the executors of George Miller have not appealed, neither has Walsh appealed. The appeal is taken by Gay only.

THE ARGUMENT.

The note payable at one year is out of the way, for Brown & Whiting, executors, have not appealed.

The judgment of the Superior Court on the claim of Edward J. Gay, transferee of Ames, should be affirmed.

We will proceed to show that Ames sold the judgment to Aymar, one of the judgment defendants, for $8000, upon which $3000 were paid, leaving $5000 due on the judgment, to which the claim of Gay should be reduced.

It will be pretended that the purchase was made by one Redmond and not by Aymar, the judgment defendant. We will show that the purchase was made by Aymar, and that Redmond & Eastman, who figure in this suit, were but the tools of Aymar for the commission of his fraud; that Aymar was in the habit of buying judgments rendered against him, in the name of Redmond and of Eastman, for less than the face of the judgment, and afterwards executing them against himself and thereby defrauding his other judgment creditors.

The negotiations for the purchase by Aymar from Ames were made by Elder, broker. He says, p. 148, Aymar employed him to make the purchase. Aymar said he had a friend that wanted to make the purchase, but the friend never appeared. Elder knew no one but Aymar. He negotiated the purchase with Judge Merrick, attorney for Ames, and made the purchase by a letter written to Judge Merrick. The letter is in evidence, p. 130. The letter reads:

"NEW ORLEANS, May 7, 1874.

JUDGE E. T. MERRICK:

Attorney for F. M. Ames, New Orleans:

Sir: I am instructed to accept the proposition mentioned by you for the entire claim of Mr. Ames against Australia plantation and W. H. Aymar, the present owner, to-wit: The price of eight thousand dollars and the fees, payable three thousand dollars in cash, within thirty days or less time, the balance to be paid between this time and next January, all the papers to be held for the deferred payments.

Whatever may be realized from your lien on the sugar will be considered as part of the first cash payment. The party understands that the "fees" will not exceed 5 per cent. on the whole amount of the claim. Upon your approval of this agreement, the party will immediately make his arrangements to prepare funds, and expects to be able to settle for the cash in a few days.

Respectfully,

THOS. H. ELDER, *Broker.*"

Ames, the vendor, says in a letter to Merrick, exhibit 2, p. 73: "I never supposed you were dealing with any person beside Aymar. Your letter will not warrant any other supposition."

Mr. Ames says in his testimony, p. 64, he received propositions to buy his judgment; the propositions were in writing by letters from E. T. Merrick, and one from Elder, and a telegram from W. H. Aymar, and one from Frank Butler. See testimony of Ames, p. 64.

The telegram from Aymar is on p. 67: "Parties will buy your note against Australia plantation for sixty-five hundred dollars, to be consummated in sixty days. Will you accept above for your whole claim? Answer paid."

The letter of E. T. Merrick says, pp. 67, 68: "Your telegram of March 30th is at hand, and I have had a conference with the broker, who is managing for Aymar, and submitted to him your counter proposition."

The one from Elder, broker, p. 67, says:

"NEW ORLEANS, April 3, 1874.

JUDGE E. T. MERRICK:

Sir: I am instructed to offer the sum of eight thousand

dollars for the whole claim of F. M. Ames against Australia plantation, with 90 days to consummate the payment. Also to pay in addition for fees, and costs of Court within ten days after you accept this proposition, which you will please dispatch immediately, as it is necessary to know at once. The interest or benefit in the seizure of sugar is also to be transferred to the party in whose interest this proposition is made.

Respectfully,

THOS. H. ELDER, *Broker.*"

The one from Frank Butler is as follows, p. 70:

"NEW ORLEANS, July 29, 1879.

F. M. AMES:

No crop nor seed on Australia plantation. Mules and carts sold for taxes, and taken away some time since. Am told the place will not bring seven thousand dollars. Offer made Judge Merrick, and Court costs, best I can do.

Signed,

FRANK L. BUTLER."

Mr. Ames says, p. 66: "From representations made to me by my counsel, Judge Merrick, I supposed he, Mr. Butler, acted for Mr. Aymar."

Butler was counsel for Aymar. See evidence of Judge Merrick, p. 131; of T. H. Kennedy, pp. 146, 147; of Butler, page 142.

We call the attention of the Court again to the letter of Thos. H. Elder, broker. In it he says: "Whatever may be realized from your lien on the sugar will be considered as part of the first cash payment."

We contend the sugar was the property of Aymar, and if what may be realized from the sugar is to be considered as part of the cash payment, and we can show the sugar was the property of Aymar, then there will be do doubt, that Aymar was the real purchaser of the judgment, and that the $3000 that were paid, were paid by Butler, Aymar's attorney for Aymar. There was a suit of Mercer vs. Aymar and Eastman,

the Transcript of which you will find on p. 102. In this suit the judgment was against Eastman & Aymar in solido, p. 112. Execution issued, p. 113 and 116, and the sheriff seized a lot of sugar belonging to Aymar, p. 117, that was on the Australia plantation; this sugar was appraised at $7007 50, p. 119.

Then on the joint motion of Kennedy & Chiapella, of counsel for Mercer, and of Frank N. Butler, of counsel for Henry P. Redmond, and on suggesting to the Court that said William N. Mercer has for a valuable consideration, transferred and assigned to said Redmond, on terms and conditions agreed upon by them (with exclusion of all warranty), all his said, Mercer's right, title and interest, in and to this suit, the notes described in the petition, the judgment rendered therein, and the execution issued on said judgment. It is ordered that said Henry P. Redmond be substituted for and in the place of said Wm. N. Mercer, as plaintiff herein, and subrogated to all his rights in the premises. It is further ordered that defendants be duly notified of this transfer and subrogation," p. 121.

Redmond says, p. 77: "It is not true that Aymar paid or settled the claim and suit of Dr. Mercer, or caused said Mercer to subrogate me to his rights; but Eastman did. I really had no interest in the subrogation, and was only permitting my name used for that purpose by Eastman, but not by Aymar." Then Eastman was buying a judgment against himself, in the name of Redmond. We will show it was really Aymar buying it in the name of Redmond. Redmond & Eastman were both the tools for fraudulent purposes of Aymar. Eastman says, p. 162, the sugars seized were from the Australia plantation. Aymar told him to buy the judgment, p. 162.

Then Redmond subrogated to Mercer issued an alias fi. fa. against Eastman and Aymar, p. 122. Milliken, a merchant in New Orleans, sold the sugar, and the net proceeds $3608 13 were paid over to plaintiff's attorney, p. 122. The attorney was Frank N. Butler, who was the attorney for Aymar, p. 150. He credited the amount to Redmond. Butler says he got the money from the sheriff. The account which Butler kept with Redmond, p. 150, and the vouchers he produced for his dis-

bursements show that this money went to Aymar. See vouchers, p. 155 to 159.

The $3608 13 were received by Butler on the 30th May, 1874, p. 150, and he paid to Judge Merrick, attorney for Ames, on 3d June, 1874, $3000. The entry is as follows: "1874, June 3, to Frank N. Butler for amount paid to E. T. Merrick, attorney for F. Ames, in account purchase price of the first mortgage of $11,000 on Australia plantation $3000," p. 150.

When the judgment of Mercer was transferred to Redmond —the collateral that Mercer held was also transferred to him, and we find this same collateral afterwards pledged to Brown & Whiting, executors, to secure a debt due them by Aymar.

The collateral was the note of $11,000, payable at one year, pp. 102, 111; Butler, p. 144.

Q. Mr. Butler, after the transfer was made to Redmond from Dr. Mercer of the mortgage note for $11,000, is it or not to your knowledge that this note of $11,000 was pledged to a man named Miller?

A. Yes sir.

Q. To secure a debt of Aymar?

A. I believe it was sir. It is to my knowledge that it was pledged to Mr. Miller to secure a debt.

Q. Of Aymar?

A. Wait a moment. It was to secure a note which Redmond had given to Mr. Miller for some $1600.

Q. But do you not know that that debt was the debt of Aymar?

A. I believe that Aymar owed Mr. Miller about that sum, page 144.

Mr. Ogden, in his statement, p. 193, says he received the note from Redmond as a pledge for the payment of the debt of Aymar, and he negotiated for it with Mr. Butler.

We submit we have shown that Redmond is Aymar, and the claim of Ames was bought by Aymar, and not by his tool Redmond.

We will now show that Gay when he bought the claim knew all these facts. It is not necessary in law for us to show that

Gay had notice of all this, for the claim or judgment of Ames was not a negotiable instrument and if it had been diminished to $5000 when held by Ames, Gay could certainly not acquire any greater rights than Ames had.

The transfer or subrogation to Gay was made before a notary public on the 16th of June, 1876.

It is not a truthful document. It is a fraud in that it conceals important facts and was intended to take an unfair advantage of concurrent mortgagees.

It transfers to Gay all the right, title, interest, claim and property whatever which the said Ames has in and to a certain judgment or decree rendered May 24th, 1873, and signed May 29th, 1873, in the suit in equity, in the Circuit Court of the United States, Fifth Circuit and District of Louisiana, entitled Frank M. Ames vs. Margaret D. Allain, Sosthene Allain and Wm. H. Aymar, No. 6894, the said decree being to enforce a mortgage in favor of said Frank M. Ames for the amount of the mortgage held by him, to-wit: the sum of $11,000, interest and costs and attorneys fees upon the Australia plantation. It conceals the payment of $3000 and the transaction with Aymar. Armed with this fraudulent instrument Gay proceeded to collect the whole $11,000, interest, costs and attorneys fees.

But the evidence discloses the true state of facts.

Merrick says: when the transfer was made to Gay he thinks Gay was informed of the previous transfer mentioned in documents 1, 2 and 3, the previous transfer had been the subject of conversation with Gay, p. 132.

Merrick being asked: In the sale made to Gay did you, acting as the agent of Mr. Ames, guarantee to Mr. Gay the full amount of this judgment for the price of $5500?

Answer, p. 132. I do not think there was any guaranty. I am not certain that Mr. Ames did not himself have a conversation with Mr. Gay in regard to it; but my understanding was that in the event that this $3000 was shown to be a payment on that judgment Gay, or Gay & Co., would submit to that claim without any reclamation against Ames, p. 132.

Merrick says there may be a counter letter, p. 133.

Mr. Ames in his letter to Judge Merrick says, 136: "It is understood that the money heretofore paid me on this note, $3000, is to remain with me in any event; that under no circumstances can either Gay or the party who paid the amount to you recover it in any suit against me."

Mr. Ames in his letter to Judge Merrick, dated May 11th, 1876, p. 139, says: "Gay to guarantee me against any loss or expense in case the party who paid the $3000 should bring a suit to recover the money or any portion thereof." Merrick, p. 139, says: "Gay knew about the substance of this letter."

Ames says, p. 65: Answer to 11th interogatory: "I had a conversation with Edward J. Gay, in March, 1876, on board of a steamer on the Mississippi River. I then told Mr. Gay all my transactions concerning the property." To 16th interogatory, p. 65, he says: He (Gay) did know that I had received $3000. I told him so in our conversation on the steamboat in March, 1876, above aluded to.

To 19th interogatory, p. 66: He (Gay) made the purchase, knowing all the facts.

We have shown that Aymar, the judgment debtor, brought the judgment and claims of Ames for $8000 and $1000 Counsel fee, and paid thereon $3000, leaving a balance due of $5000, and $1000 for Counsel's fee, and that Gay was informed of the transaction when he bought from Ames.

Gay paid $5,500. He bought to control the mortgage, and with a view of forcing the sale of the plantation in order that he might become the purchaser. And he immediately made it appear by the act of purchase that he bought the whole judgment of $11,000 interest and costs and attorney's fees for $5,500, and he then by judicial proceedings and to the predjudice of concurrent mortgagees, endeavored wrongfully to collect the whole face of the judgment.

But this wrong of Mr. Gay does not stop there. He contrived another in the name of R. M. Walsh his clerk. He made his clerk Walsh intervene and claim $3000. We have heretofore stated the substance of Walsh's intervention. Walsh alleges that the claim of Ames had been reduced to $8000

less $3000 paid,—leaving of course a balance of $5000, p. 80, art. V. And in art. VIII, p. 81, he alleges "your orator shows; that notwithstanding the existence of the facts disclosed as aforesaid in articles V, VI and VII of this your orator's bill of complaint, the said Edward J. Gay with full knowledge thereof, and after due notice given him of the existence of such facts, did *wrongfully, knowingly and without acquiring any lawful right, or title thereto, pretend to acquire* and purchase from said Frank M. Ames the note, mortgage and decree hereinabove referred to."

We will now show that Walsh is Gay, and the pleadings will stand thus, he, Gay, "after due notice given him of the existence of such facts did wrongfully, knowingly and without acquiring any lawful right or title thereto pretend to acquire and purchase from Frank M. Ames the note, mortgage and decree hereinabove referred to."

If we succeed in showing that Walsh is Gay, we will have Gay charging himself with a fraud.

The fraud was so apparent we examined Walsh, himself, as a witness; at first, he was not very willing to expose his employer, Gay. He says he is a clerk for Gay, p. 98; does not know Redmond nor Eastman. The purchase, the whole transaction, was made by Gay. He does not know what he purchased. He says he purchased a mortgage note; he cannot describe the note. He does not know the day the note was made, nor its amount, nor the property mortgaged to secure it, nor the date of the maturity of the note, which he pretends to have purchased. He was requested to make the purchase by Gay. He did not pay his money. He paid for it with the money of Gay or Gay & Co. Being asked whether it is not true that he is only a party interposed in this matter for Edward J. Gay, he says, "I believe it to be so." P. 98-101. Thus, we have shown that Walsh is Gay—and the allegations of fraud made against Gay are those of Gay against himself. One of the allegations is that the claim of Ames was reduced by a sale to $8000, upon which $3000 was paid. This is the allegation. Therefore, we say, Gay cannot recover under any circumstances, more than $5000.

The Circuit Court allowed Mr. Gay $5000 and $1000 for counsel fees.

The judgment should be affirmed.

Relative to the intervention of Mrs. Peniston and Miss Allain, their claim is established by

1st. The mortgage in the sale of Mrs. Allain to Wm. H. Aymar, 9th May, 1871, p. 172.

2d. Fourteen (14) notes secured by mortgage, made by Aymar, p. 175.

3d. Certificates from the Recorder of Mortgages of the parishes of Iberville and West Baton Rouge, pp. 180, 178.

We pray that the judgment of the Circuit Court be affirmed.

GEO. L. BRIGHT,

Counsel for Appellees.

January, 1880.

After acquired the note
from Merrill and from
Aymar

Exhibit C p 31
Ev. Allen p 168 171
Ev Hare p 204 205